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**ZAKAT INVESTMENT IN MALAYSIA:
A STUDY OF CONTEMPORARY POLICY AND
PRACTICE IN RELATION TO *SHARĪcA***

PRESENTED BY

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IN THE NAME OF ALLAH THE COMPASSIONATE, THE MERCIFUL

DECLARATION

I, THE UNDERSIGNED, HEREBY DECLARE THAT THIS THESIS IS WRITTEN
BY MYSELF AND ANY REFERENCES MADE TO THE SOURCES ARE DULY
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WAN MARHAINI WAN AHMAD

ABSTRACT

Zakat is an obligatory payment that a free and rational Muslim who owns a certain amount of wealth has to observe. The idea of zakat investment was initiated by the belief that providing the poor and needy with a non-substantial amount of fund that is mostly used to pay for their consumption is not enough to tackle poverty. Collection of zakat itself also has been shown insufficient even to provide them with a subsistence level of income. Muslim scholars suggest a long-term measure involving the investment of zakat that not only supplement the poor with a stream of income that is more consistent and continuous, equip them with the opportunity for equity participation or provide them with projects that help improve their livelihood but also provide a source of revenue to fund overall Muslim economic development. However, Muslim scholars found that investment of zakat may make the payment legally vulnerable from the *Sharī'a* (Islamic law) point of view. Thus, many *fatwās* and views have been expressed by the Muslim scholars as guidelines to ensure that the investment activities conform to *Sharī'a*. This study examines contemporary policy and practice in the management of zakat investment in Malaysia, particularly at two zakat institutions: Majlis Agama Islam Wilayah Persekutuan and Lembaga Zakat Selangor. These two institutions are selected because they are the most vibrant zakat institutions in the country in terms of zakat revenue and they also are the most active in investing zakat. Given the many background complaints about the institutions' inefficiencies in managing zakat particularly the large amount of undistributed zakat, it is thus pertinent to analyze the compliancy of these investment activities with the principles and purposes of zakat. The study finds that these institutions accordingly have moulded their investment activities not only to observe the principles of zakat but also according to the modern changes in the administration of zakat in the country as well as to cater for the recipients' current needs. The study also finds that various policies have been set up to guide the management of these investment activities. Still, there remain numerous possibilities for improving these further.

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NOTES ON TRANSLITERATION

Consonants					
ف	F	f	ر	R	r
ق	Q	q	ز	Z	z
ك	K	k	س	S	s
ل	L	l	ش	Sh	sh
م	M	m	ص	Ṣ	ṣ
ن	N	n	ض	Ḍ	ḍ
و	W	w	ط	Ṭ	ṭ
ه	H	h	ظ	Ẓ	ẓ
ي	Y	y	ع	ʿ	
ال	Al	al	غ	Gh	gh
				ء	ʾ
				ب	B b
				ت	T t
				ث	Th th
				ج	J j
				ح	Ḥ ḥ
				خ	Kh kh
				د	D d
				ذ	Dh dh

Vowels					
Long:			Short:		
آ - ا	Ā		ا	a	
او	Ū		و	U	
اي	Ī		ي	I	
Doubled:			Diphthongs:		
أبّ	abb		أو	Aw	
إبّ	ibb		أي	Ay	

Note: The Arabic words which are very common in the English written literature on Islamic studies like zakat, Quran and hadith are not in italics.

ABBREVIATIONS

ABIM	Angkatan Belia Islam Malaysia
A.D.	<i>Anno Domini</i>
Aug.	August
CZF	Central Zakat Fund
cont.	continued
d.	died
Dec.	December
ed.	Edited
et al.	'et alii' (masculine plural) or 'et aliae' (feminine plural) or 'et alia' (neuter plural) when referring to a number of people)
etc.	etcetera
Feb.	February
H.	Hijra
Ibid	ibidem
IKB	Institut Kemahiran Baitulmal
IRB	Internal Revenue Board
JAKIM	Jabatan Kemajuan Islam Malaysia
Jan.	January
KWD	Kuwaitian dollar
LZC	Local Zakat Centre
LZS	Lembaga Zakat Selangor
MAIN	Majlis Agama Islam Negeri (State Islamic Religious Council)
MAIS	Majlis Agama Islam Selangor (State Islamic Religious Council for the state of Selangor)
MAIWP	Majlis Agama Islam Wilayah Persekutuan (State Islamic

	Religious Council for the state of Wilayah Persekutuan)
M\$ or RM	Malaysian Ringgit (Malaysian currency)
NEP	National Economic Plan
no.	Number
Oct.	October
Nov.	November
OIC	Organization of the Islamic Conference
PAS	Partai Islam Semalaya or now known as Parti Islam Semalaysia
PPZ MAIWP	Pusat Pungutan Zakat Majlis Agama Islam Wilayah Persekutuan
PZC	Provincial Zakat Fund
PZS	Pusat Zakat Selangor
Qur.	Quran
Sec.	Section
Sept.	September
v.	Volume
vols.	Volumes
YaPEIM	Yayasan Pembangunan Ekonomi Islam Malaysia

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Chapter 1

Introduction

1.1 Background

Zakat is the third pillar of Islam and it is an obligatory payment that a free and rational Muslim who owns a certain amount of wealth has to observe. Its importance in Islam is manifested by the numerous pairings of its obligation to that of prayer (*ṣalā*) in the Quran. It is one of the fundamentals of Islam which has direct economic implications on Muslims for it involves the distribution of wealth from the affluent in society to those in need. As an instrument of income and wealth distribution, zakat becomes an important fiscal mechanism, the objective of which is to achieve socio-economic justice. This is apparent from the emphasis of the Quran on the distribution of zakat to the poor segment of society enumerated as recipients of zakat, as well as the recognition of their rights to a portion of societal wealth.¹ The Quran says, “Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allah;

¹ Monzer Kahf, “The Principle of Socioeconomic Justice in the Contemporary Fiqh of Zakah”, http://monzer.kahf.com/papers/english/socioeconomic_justice.pdf (accessed on 20 Jan. 2009), 12.

and for the wayfarer: (thus it is) ordained by Allah and Allah is full of knowledge and wisdom,”² and “And those in whose wealth there is recognized rights. For the beggar who asks and for the unlucky who has lost his wealth.”³

Classical Muslim scholars recognize zakat as a mechanism not only to fulfil the basic needs of the poor but also to empower them with capital and earning capabilities. In the allocations of zakat, jurists emphasize the need of the poor and the destitute above other recipients of zakat to ensure that religion and life are protected through the fulfilment of basic needs like food, clothing, shelter and health care. Some jurists like the Shāfi‘īs allow zakat to be disbursed in capital working tools that enable them to produce more and to secure better income.⁴

Contemporary Muslim economists have similar views on the economic values of zakat. Zakat is considered to be an effective mechanism to raise the standard of living of the poor, as well as an important source of public revenue in enhancing the expenditure of developing Muslim nations. According to Ahmad, zakat assures the basic necessities of life to those who are in poverty and unable to undertake gainful employment without society’s help and assistance.⁵ The effect of zakat on poverty for Mannan is cumulative. Zakat not only increases the income level of the poor in society but also increases the effective demand for basic needs, which in turn will encourage production of socially desired goods and services in the society.⁶ Special traits of zakat enhance and assure its

² Qur. 9: 60.

³ Qur. 70: 24-5, 51: 19.

⁴ Abū Zakariyyā Muḥyi al-Dīn ibn Sharaf al-Nawawī, *Kitāb al-Majmū‘ Sharḥ al-Muhadhdhab li al-Shīrāzī* (Jeddah: Maktabat al-Irshād, 1977), v. 6, 175-6; Muḥammad ibn Idrīs al-Shāfi‘ī, *al-Umm* (Al-Manṣūra: Dār al-Wafā’, 2001), v. 3, 183.

⁵ Kurshid Ahmad, *Economic Development in an Islamic Framework* (Leicester: The Islamic Foundation, 1979), 15.

⁶ M.A. Mannan, “Effects of Zakah Assessment and Collection on the Redistribution of Income in Contemporary Muslim Countries”, in *Management of Zakah in Modern Muslim Society*, ed. Imtiaz et al. (Jeddah: IDB Islamic Research and Training Institute, 2000), 29-50.

effectiveness as a source of public revenue. The obligatory nature of zakat, its fixed rates, the minimum amount of taxable wealth (*niṣāb*) and the delineation of zakat disbursement, according to Faridi, lend elements of continuity and stability to public revenues. Assurance from the collection of zakat is particularly useful for the planning and maintenance of public expenditure, and the delineation of recipients serves to protect its allocation against the economic, fiscal or political whims of the zakat administration.⁷ Furthermore, resource allocation in the presence of zakat, for Chowdhury and Metwally, is more efficient than other alternatives because of its strong religious incentive which produces other effects, such as motivational effects to invest idle wealth and to participate in the labour force.⁸

Even though zakat is an obligatory payment on the affluent and a major source of Islamic religious public revenue, it has been found lacking to take full charge of fulfilling the basic needs of the poor,⁹ especially in low-income Muslim countries.¹⁰ Kahf, who provides estimations of zakat proceeds for several Muslim countries,

⁷ F.R. Faridi, "Zakat and Fiscal Policy", in *Studies in Islamic Economics* ed. Khurshid Ahmad (Jeddah: International Centre for Research in Islamic Economic, 1980), 119-27; F.R. Faridi, "Capital Formation, Economic Growth and Public Budgeting in an Islamic Framework", in *Financing Economic Development: Islamic and Mainstream Approaches*, ed. Abulhassan Sadeq, (Longman: Kuala Lumpur, 1992), 96-124.

⁸ Masudul Alam Chowdhury, "The Role of Az-Zakah in Resource Allocation", in *Some Aspects of the Economics of Zakah*, ed. Raqibuzzaman (Indiana: American Trust Publications, 1980), 159-69; M.M. Metwally, "Economic Consequences in Applying Islamic Principles in Muslim Societies", *International Journal of Social Economics*, 24: 7/8/9 (1997), 953-4.

⁹ An average of 31% of the Organizations of the Islamic Conferences (OIC) countries population (about 338 millions) suffered from human poverty. Sesrtcic (2003), "Combating Poverty and Food Insecurity in the Least Developed and Low-Income OIC Member Countries" (paper presented at the 13th Islamic Conference of Foreign Ministers, Tehran, 28 – 31 May 2003), <http://www.sesrtcic.org/pubs/reports/sesrepfl.shtml> (accessed on 24 April 2006).

¹⁰ Classical jurists since the second century of Hijra have allowed the imposition of secular taxes upon the rich when zakat and voluntary contributions were found inadequate to fulfil the need of the poor. The allowance to collect secular taxes implies the inadequacy of zakat as the sole source of finance to service public expenditure. Monzer Kahf, "The Performance of the Institution of Zakat in Theory and Practice" (paper presented at the International Conference on Islamic Economics Towards the 21st Century, Kuala Lumpur, 26 - 30 April 1999), 7.

concludes that the amount of zakat collections will not be able to produce the warranted economic effects at the desired speed. The amount of collection is found to be too low to leave significant and timely impact on Muslim socio-economic development.¹¹ Any increase in the amount of zakat available for distribution, according to Salih, will definitely widen the reach of zakat benefits to more recipients than before¹² either through an increase in the received allocations or through an increase in the quantity and quality of the modes of distribution employed.

Scholars conclude that these insufficiencies of zakat as an effective public fiscal tool are mainly due to the inefficiencies of the responsible zakat institutions in utilizing and managing zakat. The institutions are found to be incompetent both in securing and increasing the collection of zakat, and ensuring the effectiveness of its distribution.¹³

One of the many explanations given for these problems is the tendency of the policy makers to narrow the interpretation of the zakat principles, the result of which limits the Islamically approved methods in collecting and distributing zakat. The coverage of zakatable items were found limited to those mentioned in the hadiths, while in reality a variety of new economic activity and wealth emerges. Thus scholars like Kahf, Iqbal and Abu Saud suggest a review of the zakat coverage, its *niṣāb* and rates in accordance to changes in wealth composition over time in order to increase the collection of zakat.¹⁴

¹¹ Kahf, "The Performance of the Institution of Zakat in Theory and Practice", 22-4.

¹² Siddig Abdelmageed Salih, *The Challenges of Poverty Alleviation in IDB Member Countries*, (Islamic Development Bank, 1999), 41-42.

¹³ M. Umer Chapra, *Islam and the Economic Challenge* (Leicester: The Islamic Foundation, 1992), 223-4, 270-5.

¹⁴ Monzer Kahf, "Zakat: Unresolved Issues in the Contemporary Fiqh", *Journal of Islamic Economics*, 2: 1 (1989), 10-1; Mahmoud Abu Saud, *Contemporary Zakah* (Ohio: Zakat and Research Foundation, 1988), 113; Munawar Iqbal, "Causes of Fiscal Problems in Muslim Countries and Some Suggestions for Reform," in *Financing Development in Islam*, ed. M.A. Mannan (Jeddah: Islamic Research and Training Centre, 1995), 128-9.

As for the distribution of zakat, the narrow interpretation of the zakat principles has limited the modes of distribution to the rightful recipients. One of the main principles of zakat distribution is that payment must be made the moment that zakat becomes obliged upon the owners of the zakatable wealth. The Quran says, "... And they must render the dues that are proper on the day that the harvest is gathered..."¹⁵ As a result of this principle, zakat is most often disbursed to fulfil the immediate needs of the recipients. For the poor and destitute, this is normally a one-off payment whether in money or kinds which assist them to fulfil their demanding basic needs. Similarly, for the rest of the recipients the allocation of zakat is made to fulfil their current needs whether to settle their debts, to emancipate them from their bondage, or to pay for the costs of their services.

Some Muslim scholars insist that the practice of distributing zakat to fulfil the immediate needs of the recipients alone is not sufficient to realize the above purposes of zakat, especially to alleviate the poverty that inflicts a large segment of the Muslim population and to advance overall Muslim development. They suggest that in order to increase the benefits of zakat, it is better to diversify the methods of disbursing zakat. Zakat as a major source of Muslim revenue should not be limited to distribution to fulfil the immediate needs of the recipients only. It should be at the same time invested for their future benefits.¹⁶

The enrichment purpose of zakat for the poor may be maximized by changing the mechanism of its distribution from focussing on the fulfilment of their immediate needs to also include investment for their future benefits. Instead of only providing the poor

¹⁵ Qur. 6: 141.

¹⁶ Sesrtic, "Combating Poverty and Food Insecurity in the Least Developed and Low-Income OIC Member Countries"; Mabid Ali al-Jarhi and Muhammad Anas Zarqa, "Redistributive Justice in a Developed Economy: An Islamic Perspective", in *Advances in Islamic Economics and Finance*, ed. Munawar Iqbal et al. (Jeddah: Islamic Development Bank, 2007), 43-4.

with a subsistence level of income monthly or yearly, this possible major source of funds will become more effectual in alleviating poverty if it is also invested in long-term capital investments. This suggestion is based on the belief that to emerge from the vicious cycles of poverty, the allocation of a non-substantial amount of funds, most of which will probably be used to pay for their consumption alone, is not enough. A long-term measure that may supplement the recipients' regular zakat receipts with a stream of income that is more consistent and continuous, equipping them with the opportunity for equity participation or empowering them with employable or income generating skills, is essential to make the distribution of zakat effective. All these measures which involve the long term investment of zakat are necessary besides from the typical provisions that help to improve their livelihood in the long-run, such as setting up schools and hospitals that provide them with education and health care.¹⁷

Apart from the adaptation of long term modes of distribution, scholars also suggest that investment is the best alternative for any undistributed zakat. Keeping zakat funds idle, according to Anwar, is similar to the hoarding of wealth which is prohibited by the Quran. As a public fund, it is pertinent that the fund is invested in profitable ventures to avoid the gradual erosion of its value.¹⁸ Muḥammad Farah also supports this view when he argues that the investment of zakat avoids the depreciation of idle collection surpluses. Leaving undistributed zakat unused will expose it to unwanted inflationary

¹⁷ Fouad Abdullah al-Omar, "General, Administrative and Organizational Aspects", in *Institutional Framework of Zakah: Dimensions and Applications*, ed. El-Ashker et al. (Jeddah: IDB and IRTL, 1995), 58; Habib Ahmed, *Role of Zakah and Awqaf in Poverty Alleviation* (Jeddah: IDB and IRT, 2004), 64; F.R. Faridi, "A Theory of Fiscal Policy in an Islamic State", *Journal of Research in Islamic Economics*, 1: 1 (1983), 28-9; Saif el-Din Tag el-Din, "Allocative and Stabilizing Functions of Zakah in an Islamic Economy" (paper presented at the International Seminar on Fiscal Policy and Development Planning in an Islamic State, Islamabad, 1986), 6-7.

¹⁸ Muhammad Anwar, "Financing Socio-Economic Development with Zakat Funds", *Journal of Islamic Economics*, 4: 1 & 2 (1995), 18-9.

effects.¹⁹ Any surplus of zakat which is yet to be distributed, whether after fulfilling all the recipients' needs or because of the time needed to find suitable recipients, can be invested to earn extra benefits which can counter the inflationary effects. Another advantage of investment of undistributed zakat is its expected returns which can further increase the amount of zakat revenue without affecting the recipients' rights. If the amount of revenue is considerable, then it can assure a steady supply of income to the zakat funds besides the typical zakat collection. The generated income can also provide an extra cushion for any disruption in zakat flows.²⁰

Even though investment of zakat, as shown above, can become a viable vehicle for Muslim development, contemporary jurists are found to be a bit cautious in allowing its implementation. This is due to the fact that they found that investment of zakat are vulnerable from the *Sharī'a* (Islamic law) point of view. In investing zakat, several principles of zakat payment and distribution may be neglected and violated leading to an invalid zakat payment. These include the immediacy of payment and the transfer of zakat to the recipients, the obligation that zakat is paid fully to the rightful recipients only, and the preference of payment to the poor and needy above other recipients. Taking precautions against these vulnerabilities, contemporary jurists have outlined several requirements that must be observed to ensure that any investment of zakat is conducted according to the principles of zakat.

These precautions which were the outcomes of narrow interpretation of the sacred texts, however, limit the possibilities in which investment of zakat may assist in developing Muslims' economic achievements.

¹⁹ ‘Abd al-Fattāḥ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsāt Iqtisādiyyat Fiqhiyyat Taḥlīliyyat Muqārana* (Dubai: Maṭba‘a Bank Dubai al-Islāmī, 1997), 89-90.

²⁰ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 101.

The above conflicts between the benefits of zakat and the many views of jurists regarding its payment and distribution have been rightfully observed by Shaltut. He suggests that a new approach must be adopted to find the solutions to lessen the conflicts of views among the jurists regarding the payment of zakat and its distribution to realize the true benefits of zakat. He advocates that the issues relating to zakat must be reviewed again based on the true intentions (*maqāṣid*) of the obligation of zakat.²¹ Al-Fanjarī also supports this view. He believes that the disagreement among the jurists regarding matters that relate to zakat is due to their disagreement whether to treat zakat as an act of worship only or also to consider the purposes of zakat.²²

The *maqāṣid* approach in deciding the legality of new emergent cases could become one of the solutions that could ensure *Shari'ah* compliancy and at the same time the institutionalization and realization of the Islamic moral economy. Islamic economics is not only an economic system predicated upon the theological doctrines but also complete with values promoted by the Quran and Sunnah through which it governs all forms of economic interaction in society. It is a system that demands from Muslims complete reciprocity, integrity, an obligation to serve and to be responsible not only for their individual self but also for the community. It is characterized by equitable distribution of wealth and systemic social structures that provide universal care for all individuals in need.²³

The *maqāṣid* approach is a moral foundation beyond Islamic law constructs which seamless ethos gives the injunctions their energy and cohesiveness. Mechanistic or strict

²¹ Sheikh Maḥmūd Shaltūt, *al-Islām: 'Aqīda wa Shari'ah*, (Egypt: Dār al-Shurūq, 2001), 98.

²² Muḥammad Shawqī al-Fanjarī, *al-Madhab al-Iqtisādī fī al-Islām* (Egypt: Al-Hay'at al-Miṣriyyat al-ʿamma li al-Kitāb, 1997), 185.

²³ Mehmet Asutay, "Political Economy Approach to Islamic Economics: Systemic Understanding for an Alternative Economic System" *Kyoto Bulletin of Islamic Area Studies*, 1-2 (2007), 4; Shafiel A. Karim, *The Islamic Moral Economy. A Study of Islamic Money and Financial Instruments* (Florida: Brown Walker Press, 2010), 1.

interpretation of the divine text may render a failure to endogenise the values contained holistically in the Quran and Sunnah. By considering the purposes of law in deciding the legitimacy of an action and its consequences, this approach will ensure *Sharī'a* parameters are fully observed without forsaking the obvious moral responsibilities.²⁴

Hence, the legality of zakat investment should be assessed not only by considering the implied meaning of a term (*dilālat al-lafz*) conveyed by the specific texts. A more holistic approach where the values underlying the laws (*maqāṣid al-Sharī'a*) must also be taken into consideration to provide a critical perspective on the legality of zakat investment. Auda hails this approach as the most important intellectual means and methodologies for Islamic reform. It is an approved Islamic methodology that addresses the Islamic mind and Islamic concerns.²⁵ For new emergent cases, applying principles by which the revealed law can be applied to situations beyond the immediate wording of the authoritative texts is not only a necessity but an essential stipulation to ensure the dynamism of Islamic law.²⁶

²⁴ Asutay, "Political Economy Approach to Islamic Economics: Systemic Understanding for an Alternative Economic System", 8-9; Abdulazeem Abozaid and Asyraf Wajdi Dusuki, "The Challenges of Realizing Maqasid al-Shari'ah in Islamic Banking and Finance" (paper presented at the IIUM International Conference on Islamic Banking and Finance: 'Research and Development: The Bridge between Ideals and Realities', Kuala Lumpur, 23 – 25 April 2007), 2-3, 17-18.

²⁵ Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (Kuala Lumpur: Islamic Book Trust, 2010), 8-9.

²⁶ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul al-Fiqh)* (Islamabad: Islamic Research Institute Press, 2000).

1.2 Aims of the Research

Malaysia is a country with a total landmass of 329,847 km² (127,355 mi²)²⁷ located between Thailand, Indonesia and Singapore in the south-east of Asia. The population in 2009 was 28.31 million²⁸ comprising mainly of Malays, Chinese and Indians. More than half of the population is Muslim.²⁹ There are fourteen states in Malaysia which have their own local governments. They are Wilayah Persekutuan, Selangor, Kelantan, Kedah, Johore, Malacca, Perlis, Penang, Negeri Sembilan, Perak, Terengganu, Pahang, Sarawak and Sabah.

As one of the obligations of Islam, zakat is obliged upon Muslims in the country under the states' Islamic law enactments. The amount of zakat collected in these fourteen states in 2008 totalled more than RM1 billion and more is expected in the years to come as the economy grows. Although the amount is equivalent to about 0.002 percent of the country's Gross National Product and equals less than 0.02 percent of the federal government spending on economic and social services,³⁰ as the main source of funding from Muslims to Muslims, especially for the poor among them, it is undeniably important and forceful in influencing the wellbeing of the country's Muslim society.³¹

²⁷ Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>

²⁸ See <http://www.statistics.gov.my> (accessed on 10 June 2010).

²⁹ According to the last national population census conducted in 2000, Muslims made up 59.1% of the total population of Malaysia. See Table 4.1 in *Banci Penduduk dan Perumahan Malaysia* (Kuala Lumpur: Jabatan Perangkaan Malaysia, 2000), 70.

³⁰ The total zakat collected by all of the states' Majlis Agama Islam was RM1,038,259,923. The Malaysian Gross National Products in the same year was RM528,804 million. Federal government development expenditures for social and economic services totalled at RM43,809 million. See http://www.epu.gov.my/c/document_library/get_file?p_l_id=29580&folderId=29570&name=DLFE-1610.pdf (accessed 28 June 2010) and http://www.treasury.gov.my/pdf/ekonomi/dataekonomi/2010/timeseries/FGDE1970_2009.pdf (accessed on 20 Jan. 2010).

³¹ A study conducted on the most deprived Muslims in Kuala Lumpur found that zakat was the highest source of assistance for the most deprived Muslims urban dwellers compared to other welfare assistance. See Mohd Taib Dora, *Peminggiran Sosial: Keluarga Melayu Termiskin Bandar* (Skudai: University Teknologi Malaysia, 2000), 134-48.

Collection of zakat in the country is mainly made by the states' religious authorities who are appointed as the sole authority to collect and distribute zakat in each state. The zakat institutions will distribute the collected zakat to worthy recipients as quoted in the Quran and, most often, the relevant institutions will disburse a subsistent level amount of money monthly or in other forms of assistance to fulfil the basic needs of those identified as poor. At the same time, these institutions are also known to utilize zakat to fund investment activities which sometimes involve the recipients and at other times are simply to benefit from the undistributed zakat.

Zakat as aforementioned is a religious obligation on owners of zakatable wealth. The accomplishment of performing the obligation upon a Muslim owner depends on whether the collection and distribution processes are in full compliance with Islamic law. It is thus pertinent to analyze the compliancy of these investment activities with the principles and purposes of zakat, to ensure that the obligation is properly and legally observed. The investigation becomes more important especially amidst the many background complaints about the institutions' inefficiencies in managing zakat. Studies on zakat administration in Malaysia have shown that the zakat institutions are lacking in physical, financial and technical competency. There are shortages of personnel, incomplete database on recipients and eligible payers of zakat and inadequate accounting management system. The institutions were also found to continuously incur significant surpluses of zakat collection.³²

³² Nazihah Mustaffha, "Zakat Disbursement Efficiency: A Comparative Study of Zakat Institution in Malaysia" (M.A. diss., International Islamic University Malaysia, 2007), 53-54; Abdul Karim et al., "Pendapatan dan Sasaran Perbelanjaan Dana Zakat: Pengalaman di Negeri Perak, Kedah, Selangor dan Negeri Sembilan", in *Prosiding Muzakarah Pakar Zakat*, ed. Hailani Muji Tahir et al. (Kuala Lumpur: Univision Press Sdn Bhd., 2004), 79-94; Kikue Hamayotsu, "Islamisation, Patronage and Political Ascendancy: The Politics and Business of Islam in Malaysia", in *The State of Malaysia: Ethnicity, Equity and Reform*, ed. Edmund Terence Gomez (London: RoutledgeCurzon, 2004), 231-2; Aidit Ghazali, "Zakat Administration in Malaysia", in *The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 85-7; Zazli Zainuddin, "The Management of

In order to investigate the compliancy of the investment activities undertaken by the zakat institutions in Malaysia, the study specifically looks at the management and financing policies and practices involved in the undertakings of these investment activities as both reflect the overall process of investment of zakat from the planning to the transfer of zakat to the recipients. These include the allocation of zakat funds, the determination of recipients and suitability of investment projects, the monitoring of the undertakings to ensure its success, and the management of risk of investment, etc. The ways that zakat investment is managed will determine whether proper mechanisms are employed in ensuring that the principles and purposes of zakat are fully complied with, thus ensuring that zakat paid by the owner of wealth is properly channelled and received by the deserving recipients.

Given the modern changes in the administration of zakat in the country, it is also important to examine how these institutions accordingly mould their investment activities not only to observe the principles of zakat but also according to their operational structure as well as the recipients' current needs. It is also pertinent to analyze whether the adaptations made in investing zakat capture the true purposes of zakat or otherwise. This understanding will become more important in the future, given the country's economic growth as well as the continuous progression of collection of zakat which shall make it possible for more investment activities funded by zakat to be undertaken.

In studying the investment activities undertaken by the zakat institutions, the study concentrates on two zakat institutions, the Majlis Agama Islam Wilayah Persekutuan, which is the institution that manages zakat in the state of Wilayah Persekutuan, and the Lembaga Zakat Selangor, which is the institution responsible for the management of

Zakat, Sadaqat and Awqaf and Their Contributions Towards Muslim Educational Purposes in Malaysia" (M.A. diss., International Islamic University Malaysia, 1998), 98.

zakat in the state of Selangor. These two institutions are selected not as representatives of the zakat institutions in Malaysia but due to their being the highest collectors of zakat in the country. Given the high amount of collections, these institutions compared to the rest are more active in undertaking investment activities that involve zakat.

1.3 Objectives of the Research

The objectives of the research are to analyze the legal juristic issues concerning zakat investment and to probe and examine the mechanics of zakat investments conducted by the Malaysian zakat institutions whether or not they conform to the *Shari'ah*. Specifically, the objectives are as follow:

- a. To examine the discussions relating to zakat investment in the primary sources of Islamic law.
- b. To explore the purposes of law behind the obligation of zakat.
- c. To analyse the reasons why the issues relating zakat investment were only instigated by contemporary scholars and not earlier.
- d. To examine the *Shari'ah* issues raised by contemporary jurists in regard to zakat investment.
- e. To explore the historical background of zakat investment particularly in Malaysia that is necessary for full comprehension of the factors that enabled the implementation of zakat investment in the country.
- f. To study the implementation of zakat investment in Malaysia.
- g. To examine whether or not the implementation of zakat investment at these institutions complies with *Shari'ah*.

1.4 Research Questions

This research attempts to address the main issue of whether or not investment of zakat as undertaken by the Malaysian zakat institutions complies with *Sharīʿa*. Specifically, the research seeks to address the following questions:

- a. Is there any discussion on zakat investment in the Quran, hadiths or among the classical jurists?
- b. What are the purposes of law behind the obligation of zakat? Does investment of zakat fulfil these purposes?
- c. Why zakat investment and its related *Sharīʿa* issues were only raised by contemporary jurists?
- d. What are the *Sharīʿa* issues identified by contemporary jurists in regard to zakat investment?
- e. What factors has enabled the Malaysian zakat institutions to undertake zakat investment?
- f. How these institutions implement zakat investment?
- g. Have the Malaysian zakat institutions that are responsible with the management of zakat invested the zakat according to the *Sharīʿa*?

1.5 Significance of Study

There are undoubtedly many studies relating to zakat investment, but there is a conspicuous absence of any major study that is empirically-based. There have been studies that look at the legal issues in zakat investment but from the theoretical perspective only. There have also been studies conducted on assessing zakat

investment in local zakat institutions, but these studies are confined to descriptive evaluation of their operational framework from the economic perspectives. This study is a modest attempt to fill that gap.

From another perspective, the significance of this study also lies in several directions. First, this would be the most extensive attempt to look at the Islamic legal compliancy of the investment of zakat in Malaysia. Prior studies on zakat investment in Malaysia mostly describe the investment activities which are undertaken by the zakat institutions and examine its economic effects on the recipients. A few studies have attempted to assess the investment compliancy but none so far has attempted to study it in a manner as comprehensive as this study, where the overall process in managing the investment of zakat is analyzed. Secondly, in accessing the compliancy of zakat investment at these institutions, this study adopts not only the criteria proposed by temporary scholars which are based mainly on textual interpretation of the sacred texts but also a more holistic approach of the purposes of law behind the obligation of zakat. Thirdly, this study adopts a more contemporary definition of investment where its scope is not limited to investment activities that generate financial profits only but the overall economic and social benefits. Previous studies in Malaysia have focused on the financial investment activities undertaken by the zakat institutions only. And last but not the least of all this is the first study that attempts to analyze the historical growth of zakat investment in Malaysia which is pertinent in understanding the reasons behind its implementation and the evolution of the forms of zakat investment undertaken by the zakat institutions. Other studies have mainly focused on analyzing the contemporary implementations of zakat investment.

1.6 Methodology

This study is qualitative in nature, relying extensively on documentary data and supported by interviews, especially for the current practices of zakat investment in Malaysia. It is presented mainly as a case study on how zakat institutions in Malaysia invest their zakat funds, in particular at the two zakat institutions which manage the highest amount of zakat annually in the country; Majlis Agama Islam Wilayah Persekutuan (MAIWP) and Lembaga Zakat Selangor (LZS). Thus most of the data was gathered in Kuala Lumpur and Selangor, including all the interviews.

For the conceptual framework of zakat investment, the research is a library based research which refers to various works from both fields; Islamic law and Islamic economics. Our primary references for the Islamic law are mainly based on the Quran and hadith which has been extracted and presented into specific *ḥukm* or rulings by medieval jurists which may be found in many books of jurisprudence. Books on exegesis and hadith are referred to also to ascertain their validity and applicability to the case examined.

The study will only cover the related zakat laws espoused by the four main schools of the Sunni stream since these are the main schools of law referred to in the development and application of Islamic law in the country.³³ The principles of zakat, as discussed by these schools' classical jurists, are important foundations in understanding the requirements outlined by contemporary Islamic jurists on the investment of zakat. These requirements together with the purposes of law of zakat will be treated as the

³³ In issuing a *fatwā*, the Mufti, the Legal Committee and the MAIN are required ordinarily to follow the tenets of the Shāfi'ī school, but where the public interest so requires the *fatwa* may be given according to the tenets of the other schools of Sunni Islamic law; Ḥanafis, Mālikīs, or Ḥanbalīs. And only when the views of the four schools lead to a situation which is repugnant to public interest, the Mufti may resolve the problem according to his judgment. See for example, Sec. 39, Administration of Islamic Law (Federal Territories) Act, 1993 (Act 505); Sec. 54, Administration of Islamic Law Enactment (Selangor) 2003.

Sharī'a principles that must be followed in the investment of zakat. Hence, they will be used as the guidance in determining whether zakat investment in Malaysia is in conformity with Islamic law or otherwise.

For more recent legal outlook on zakat investment, the study refers mainly to modern *fatwās* on zakat investment which were issued by internationally recognized Islamic organizations such as the Majma^c al-Fiqh al-Islāmī al-Duwalī,³⁴ Majma^c al-Fiqh al-Islāmī,³⁵ Bayt al-Tamwīl of Kuwait,³⁶ Bayt al-Zakā of Kuwait³⁷ and Idārat al-Iftā', Ministry of al-Awqāf and al-Shu'ūn al-Islāmiyya of Kuwait.³⁸ For the legal perspective in Malaysia, the study refers to the Islamic law enactments codified by states' authorities and the *fatwās* issued by the states' *fatwā* committees.³⁹ In both cases, the study also refers to individual works of scholars who are considered authorities in Islamic law in general and zakat in particular.

In analyzing the workings and the current situation of zakat investment at the zakat institutions investigated, references to primary and secondary data in the forms of legislation, internal annual reports, bulletins, websites, working papers and related works are mostly utilized. Interviews are also conducted with the managers at the

³⁴ The Islamic Fiqh Academy or Majma^c al-Fiqh al-Islāmī al-Duwalī is an academy for advanced study of Islam based in Jeddah, Saudi Arabia. Its establishment was suggested at the third summit of the Organization of the Islamic Conference (OIC) in January 1981 and inaugurated in June 1983. The academy organizes an annual conference where leading Islamic jurists will deliberate and decide on specific issues faced by the Muslims which will be issued as the academy's *fatwās*.

³⁵ Majma^c al-Fiqh al-Islāmī (Islamic Jurisprudence Council) is a council under the auspice of the Muslim World League. It was established in Mecca in 1979.

³⁶ Bayt al-Tamwīl al-Kuwayfī or Kuwait Finance House is the first Islamic bank in the State of Kuwait. It was established in 1977 and has become one of the leader in Islamic finance industry.

³⁷ Bayt al-Zakā or Kuwait Zakat House, is the agency that is responsible for the collection and distribution of zakat in Kuwait. It was established on 16 January 1982.

³⁸ The board was established in 1987. It is the official *fatwā* institution of Kuwait.

³⁹ Almost all of the *fatwās* can be accessed at <http://www.e-fatwa.gov.my>.

institutions and are used to verify and augment the information derived from both primary and secondary data related to the study.

Throughout the course of this research especially in examining and analyzing the legal issues in the management and financing zakat investment, besides looking at the textual injunctions in each matter, we also analyze the rationale and the virtues of the rulings and the detriment of what is prohibited. This is in spirit of the purposes of law approach (*maqāṣid al-Sharī'a*) which assumes that the Quran not only provides the rulings but also their rationales, their objectives, and their benefits to mankind, individually and collectively. The interplay of general principles of the Quran and the purposes of law provides the flexibility needed by the modern jurists and managers of zakat to extent the law based on the texts to emerging situations especially that benefit the Muslim community.⁴⁰

1.7 Assumptions and Limitations

It is beyond the scope of this study to analyze the juristic arguments on the principles of zakat that relate to investment of zakat. For this study, its significance lies in the area of applicability of *Sharī'a* in a modern societal environment, particularly as practised by two zakat institutions in Malaysia.

As noted above, the study examines the compliancy of the management of zakat investment in Malaysia accordance to *Sharī'a*. By *Sharī'a*, the study means Islamic law which is derived from two primary sources, the divine revelations set forth in the Quran, and the sayings and examples set by the Prophet Muḥammad known as the Sunna. *Sharī'a* also encompasses the rationales and values that the law is trying to preserve. In Malaysia, some aspects of *Sharī'a* are written down and enacted into

⁴⁰ Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihād* (Kuala Lumpur: The Other Press, 2002), 229; Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach*, 8-9.

codified law. This law is normally referred to as 'Islamic law enactments'. There are many aspects of *Sharī'a* that must be observed to fully claim that an investment of zakat is Islamically valid. This study limits itself on examining the laws that relate to the payment and distribution of zakat only. It does not examine the Islamic law that concerns its investment aspect like the prohibition of involvement with interest (*ribā*) and uncertainties (*gharār*).

Even though zakat is meant for eight groups of recipients, for the present study the focus shall be on those recipients under the groups that the zakat institutions place emphasis on in their undertakings of zakat investment. These groups are the *fuqarā'*, *masākīn* and *fī sabīl li Allāh*. Thus other recipients of zakat will only be given a brief description where necessary.

The purpose of the study is not to show that, through zakat investment, the main function of zakat to enrich the poor will be maximized. Indeed, jurists from the second century of Hijra have allowed the imposition of taxes upon the rich when zakat and voluntary contributions were found to be insufficient to fulfil all of the need of the poor.⁴¹ It is also undeniable that other funds, including those channelled by the Malaysian government, have been providing billions to help the socio-economics of the poor population in the country.⁴² Thus to claim that zakat investment or even zakat can maximize the enrichment of the poor would be misleading. The study simply attempts to look at zakat investment as an alternative support to assist the needy to get out of the vicious cycle of poverty.

⁴¹ Kahf, "The Performance of the Institution of Zakat in Theory and Practice", 7.

⁴² Mohamed Dahan Abdul Latif, "Pendekatan kepada Cara Pengagihan Dana Zakat yang Dinamik Sesuai dengan Suasana Semasa", in *Kaedah Pengagihan Zakat: Satu Perspektif Islam*, ed. Nik Mustapha Nik Hassan (Kuala Lumpur: IKIM, 2001), 48-9.

1.8 A Brief Survey of the Sources

A great deal has been written about zakat, given its importance to Muslims. Taking into consideration the focus of the study, we have divided these literatures into three categories:

- i. Legal works on zakat;
- ii. Studies on zakat investment; and
- iii. Documentations and works on the implementation and operation of zakat investment in Malaysia.

1.8.1 Legal Works on Zakat

As one of the pillars of Islam, the rulings on zakat can be found in the Quran and hadith. The bulk of major works in Islamic law by prominent classical jurists has a section that specifically deals with zakat. The works mostly cover the principles of zakat, such as those obliged to pay, the types and rates of the zakatable wealth, the recipients and the methods of payment and distribution. The works of early exegetes of the Quran and commentators of hadith such as al-Zamakhsharī,⁴³ al-Rāzī,⁴⁴ al-Shawkānī,⁴⁵ al-Nawāwī,⁴⁶ and al-Khaṭṭābī⁴⁷ give good explanations of the texts that concern zakat and its rulings.

⁴³ Maḥmūd ibn ʿUmar al-Zamakhsharī, *Tafsīr al-Kashshāf ʿan Ḥaqāʾiq Ghawāmiḍ al-Tanzīl wa ʿUyūn al-Aqāwīl fi Wujūh al-Taʾwīl* (Beirut: Dār al-Kitāb al-ʿArabī, 1960), v. 2.

⁴⁴ Muḥammad Fakhr al-Dīn ibn ʿUyūn al-Aqāwīl fi Wujūh al-Taʾwīl (Beirut: Dār al-Kitāb al-ʿArabī, 1960), v. 2.

⁴⁵ Muḥammad ibn ʿAlī al-Shawkānī, *Nayl al-Awṭhār Min Aḥādith Sayyid al-Akhbar: Sharḥ Muntaqā Al-Akhbar* (Cairo: Dār al-Hadīth, n.d.).

⁴⁶ Abū Zakariyyā Muḥyi al-Dīn ibn Sharaf al-Nawawī, *Sharḥ al-Imām al-Nawawī ʿAlā Ṣaḥīḥ al-Imām al-Muslim*, in *Irshād al-Sārī ilā Sharḥ Ṣaḥīḥ al-Bukhārī li al-Qisṭilānī*, 7th ed. (Egypt: al-Maṭbaʿa al-Kubrā al-Amīriyya, 1323H), v. 4.

⁴⁷ Abū Sulaymān Ḥamd ibn Muḥammad al-Khaṭṭābī, *Maʿālim al-Sunan wa Huwa Sharḥ Sunan Abī Dāwūd* (Ḥalab: Maṭbaʿa Muḥammad Rāghib al-Ṭabbākh, 1932).

For the study, the classical books of *fiqh* from the four main Sunni schools are treated as the primary sources of Islamic law next to the Quran and the Sunna. More recent legal works on zakat by renowned Muslim jurists like al-Qaraḍāwī,⁴⁸ al-Mawdūdī,⁴⁹ and ʿUlwān⁵⁰ are also referred to. These works are mainly elaborations and summations of the classical jurists' works on zakat except on more contemporary issues where new legal insights and rulings are also suggested. For the legal rules on zakat in Malaysia, the Malaysian laws comprising of the Constitutions Acts, states' law enactments and *fatwās* are referred to as the Islamic laws currently guiding the administration of zakat by the local zakat institutions.

Studies on Zakat Investment

A review of published literature shows that, to date, a number of studies related to zakat investment have been published. The studies, in general, are centred either on the permissibility of zakat investment from an Islamic perspective or the economic effects of zakat investment on Muslim society.

There are a few important works which elucidate the legal perspectives on zakat investment and are extensively referred to by the study. These are discussions and articles published in *Majallat Majmaʿ al-Fiqh al-Islāmī* in 1987,⁵¹ "Istithmār Amwāl al-

⁴⁸ Yūsuf al-Qaraḍāwī, *Fiqh al-Zakā Dirāsa Muqārana li Ahkāmihī wa Filsifātihi fī Ḍawʿi al-Qurʾān wa al-Sunna* (Beirut: Dār al-Irshād, 1969).

⁴⁹ Abū al-ʿAlā al-Mawdūdī, *Fatāwā al-Zakat* (Jeddah: Jāmiʿa al-Malik ʿAbd al-ʿAzīz, 1985).

⁵⁰ ʿAbdullāh Nāṣiḥ ʿUlwān, *Aḥkām al Zakat ʿalā Ḍawʿi al-Mazāhib al-Arbaʿa*. Beirut: Dar al-Salam, 1978. ʿUlwān (1928-87) studied Islamic studies at the University of al-Azhar, Egypt and later on taught the subjects in Syria, Jordan and Saudi Arabia. He was a prolific Islamic studies writer. Additional details his bibliography can be accessed at <http://abdullahelwan.net>.

⁵¹ Muṭamar Majmaʿ al-Fiqh al-Islāmiy, *Majallat Majmaʿ al-Fiqh al-Islāmī*, v. 1, no. 3 (Muʿassasa al-Ṭibāʿa wa al-Ṣaffa wa al-Nashr, 1987), 363-421. The volume contains discussions and articles related to the issue of investing zakat on beneficial projects without direct transfer of ownership of zakat to the recipients of zakat. The discussions and articles were presented at the Muṭamar Majmaʿ al-Fiqh al-Islāmī held in October 1986. The participants included

Zakat Ru'ya Fiqhiyya Mu'āsira" by Shubayr,⁵² "Istithmār Amwāl al-Zakat" by Shaqra,⁵³ *Istithmār Amwāl al-Zakat wa Mā fī Hukmiha* by al-Fawzān,⁵⁴ and *al-Tawjīh al-Istithmār li al-Zakat: Dirāsa Iqtisādiyya Fiqhiyya Taḥlīliyya Muqārana* by Muḥammad Farah⁵⁵.

The discussions and articles concerning zakat investment published in *Majallat Majma' al-Fiqh al-Islāmī* in 1987 are some of the earliest work that discusses the legal issues of zakat investment. The subject under discussion was the permissibility of zakat investment in projects without direct transfer of ownership to the recipients. The discussions and articles were presented by members of the Majma' al-Fiqh al-Islāmī (Convention of the Board of Islamic Fiqh) which is a discussion forum attended by prominent Muslim scholars to deliberate on certain issues relating to Muslims. In their discussions, the attending scholars are basically divided into two main groups; those who do not allow zakat investment at all like al-Zuhaylī and Taqī ʿUthmani and those who allow it with certain conditions like al-Zarqā' and al-Qaraḍāwī. The reasons given

several prominent Muslim jurists like al-Qaraḍāwī, al-Zuhaylī, Ibn Bayh and al-Zarqā' to name a few. Among the related articles were "Tawzīf Amwāl al-Zakat fī Mashārīc Dhāt Ri' Bilā Tamlik Fardiy li al-Mustaḥaqq" by ʿAbd al-ʿAzīz al-Khayyāt and "Tawḍīf al-Zakā fī Mashārīc Zāt Ri' Dūna Tamlik Fardiy li al-Mustaḥiq" by Ḥasan ʿAbdalla al-Amīn .

⁵² The article was published in Muhammad Sulaiman al-Asyqar et.al, *Abḥath Fiqhiyya Fi Qadhoya al-Zakat al-Mu'āsira*, 2nd ed. (Amman: Dār al-Nafā'is, 2000), v. 2, 501-42. Muḥammad ʿUthmān Shubayr is a lecturer at the Faculty of Shariah, University of Qatar. The paper was first presented at the *Nadwa al-Thālitha Li Qadhāyā al-Zakat al-Mu'āsira*, organized by the Bayt al-Zakā of Kuwait in 1996, under the title "Istithmār Amwāl al-Zakat".

⁵³ The article was published in the *Abḥath wa ʿamal al-Nadwa al-Thālitha Li Qadhāyā al-Zakat al-Mu'āsira* (Kuwait: Bayt al-Zakat Hay'a Hukūmiyya Mustaqilla Dawla al-Kuwait, 1996), 61-76. ʿIsā Zakī Shaqra holds a P.h.D in Comparative Fiqh, from the Islamic University of Medina, Saudi Arabia. He is the chairman of Al Aman Investment Company and member of the Sharia Board of many companies among which are the First Investment Company, the Zakat House of Kuwait and AREF Investment Company.

⁵⁴ See Ṣāliḥ ibn Muḥammad al-Fawzān, *Istithmār Amwāl al-Zakat wa Mā fī Hukmiha*, (Saudi Arabia: Ṣundūq al-Khayr li Nashr al-Buḥūth wa al-Rasā'il al-ʿIlmiyya, 2005), 45-7. Al-Fawzān is the chief justice of the Supreme Judicial Council of the Saudi Arabia and one of the country's top scholars of Islamic law. He also serves on the Council of Senior Scholars which advises the Grand Mufti of the Saudi Arabia.

⁵⁵ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsa Iqtisādiyya Fiqhiyya Taḥlīliyya Muqārana*.

for not allowing it include the issue of delaying the disbursement, exposing the zakat fund to risk, denying individual rights to zakat, and the violation of trust in the administrator whose role is to keep and not to spend. Those who allow it, on the other hand, back their argument with the need to use the zakat fund more effectively in fulfilling the needs of the poor. Overall, the forum decided that zakat investment is allowed as long as it is meant for the recipients, belongs to them, has been exhaustively used to cater for their urgent needs and that the investment has fulfilled the requirement of avoiding the risk of loss.⁵⁶

Shubayr's work focuses on the Islamic legal rulings by modern scholars on the investment of zakat by the state or its representative. He presents the arguments made by both the exponents and opponents of zakat investment and concludes that zakat can only be invested when the state decides that it will be beneficial to the Muslim society. However, he insists that the investment must fulfil certain requirements, including conformity with *Shari'a*, non-existence of a demanding need for zakat by the recipients, a prior feasibility study of its benefits to Muslim society, etc.⁵⁷

Al-Fawzān also studies the legal rulings on zakat investment and follows a similar approach as Shubayr though he investigates the investment of zakat from a different perspective. He examines the legality of investing zakat as a wealth that a Muslim is obliged to pay. He particularly compares the legality of zakat investment that is undertaken by different entities involved in the collection and distribution of zakat. He contends that owners of zakatable wealth or their representatives have no right to invest zakat since zakat must be paid immediately to the recipients. Investment of zakat

⁵⁶ Mu'tamar Majma' al-Fiqh al-Islāmiy, *Majallat Majma' al-Fiqh al-Islāmiy*, no. 3, part 1, 363-421.

⁵⁷ Shubayr, "Istithmār Amwāl al-Zakā Ru'ya Fiqhiyyat Mu'āsira."

by the state or its representatives, however, is allowed but only if certain requirements are fulfilled. The requirements stated are very similar to that of Shubayr above.⁵⁸

A more modern approach in examining the legality of zakat investment was presented by Muḥammad Farah. Apart from discussing the legality of zakat investment among modern scholars, his discussion also encompasses the sources of financing for zakat investment projects. He suggests the utilization of surpluses of zakat for allocation for investment apart from the allocations under the group *fī sabīl li Allāh*. He also proposes other methods to fund zakat investment projects such as interest-free loan and advance payment of zakat. Although the discussion offered by Muḥammad Farah throws some lights on contemporary management and financial aspects of zakat investment, little attention seems in fact to be given to the real practices of investment of zakat.⁵⁹

There are many studies on zakat investment from the economic perspective. Most of these studies focus more on the economic rationale and beneficial advantages of zakat investment on Muslims, particularly those who are poor and in need.

Zakat Investment in Malaysia

In examining and analyzing the implementation of zakat investment in Malaysia, the study relies on several sources. Most important is the annual reports issued both by the states' Islamic religious councils known as Majlis Agama Islam Negeri (MAINs) and also the incorporated zakat institutions. These are the *Laporan Tahunan* by MAIWP, *Laporan Tahunan* by Majlis Agama Islam Selangor (MAIS), *Laporan Zakat* by Pusat Pungutan Zakat MAIWP and *Laporan Pengurusan Zakat Selangor* by LZS. Apart from these formal documentations, the study also refers to these institutions' other

⁵⁸ Al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fi Ḥukmiha*.

⁵⁹ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsāt Iqtisādiyyat Fiqhiyyat Taḥlīliyyat Muqārana*.

publications such as *Asnaf* and *Buletin LZS*, both periodicals published by LZS, and *Buletin MAIWP*, a periodical published by MAIWP. Interviews with the relevant personnel at the two zakat institutions under examination and with scholars of zakat in the country were also conducted to examine further the implementation and operation of zakat investment at these two institutions.

There is only one previous work on zakat investment in Malaysia, a dissertation titled “Pelaburan Zakat di Malaysia: Kajian di Baitulmal Majlis Agama Islam Wilayah Persekutuan”, by Ahmad bin Saleh. This study examines the investment of zakat in financial instruments and subsidiaries undertaken by the Baitulmal Division of the Majlis Agama Islam Wilayah Persekutuan prior to 1998. The author limits his study to this type of investment only because he assumes that an investment must involve capital for production and must generate monetary profits thus excluding any type of investment which produces economic and social benefits. He also finds that real property investments by MAIWP at that time were not executable because of limited financial resources.⁶⁰

Apart from the above works, other works that examine zakat investment in Malaysia are mainly articles in local journals and papers presented at conferences and seminars. These works are normally limited to studies on the undertakings of zakat investment by specific zakat institutions and are focused on specific issues like the forms of investment undertaken and their economic benefits to the recipients.

1.9 Structure of Study

The study begins with an introduction on zakat investment. In this part the study firstly discusses the definitions of zakat and investment. It then considers the

⁶⁰ Ahmad Salleh. “Pelaburan Zakat di Malaysia: Kajian di Batulmal Majlis Agama Islam Wilayah Persekutuan” (M.A. diss., Universiti Kebangsaan Malaysia, 1999).

definitions given by Muslim scholars to describe zakat investment before briefly looks at the requirements outlined by them to ensure that the investment comply with Islamic law. Next, the chapter examines the forms of zakat investment suggested by Muslim scholars and also undertaken by a few Muslim countries.

Chapter 3 discusses the historical background of zakat investment. There are three main parts in this chapter. The first part begins with the evolvement of zakat laws from the time of the Prophet until the early of the 20th century. In the second part, it considers the contribution made by the early Muslim economists towards the idea of utilizing zakat for Muslim social and economic advancement. Then it studies the *fatwās* that were issued in the 1980s and 1990s, which provide new Islamic rulings on zakat investment as a new method in distributing and utilizing zakat. In the last part of the chapter, the study examines the genesis and development of zakat investment in Malaysia. The study attempts to identify the main factors that contribute towards the growth of zakat investment in Malaysia.

Chapter 4 focuses on the purposes underlying the obligation of zakat. The chapter proceeds with the introduction to *maqāṣid al-Sharī'a* and its interplay with *maṣlaḥa*. This is followed with an examination of the aptness of its adaptation in the establishment of Islamic law. At the end of the chapter, the study analyzes the identified purposes of zakat as found in the Quran and Sunna.

Both Chapter 5 and 6 deal with the Islamic legal issues on zakat investment which have been identified and discussed among Muslim scholars. These issues are mainly the results of different interpretation and understanding of the jurists regarding the sacred texts in relevant to zakat. In chapter 5, the study deals with the legal issues that are related to the management of zakat. These include the issues of delaying the payment of zakat to the recipients of zakat, retaining fully or partly transfer of ownership of zakat to the recipients, involvement of selected recipients only in the investment activities, and sharing the benefits of investment with non-recipients of zakat.

Chapter 6 considers the legal issues that are related to financing zakat investment projects. It examines the legal concepts which influence the modes by which zakat can be allocated for investment, the methods of payments of zakat and the jurists' views regarding the reduction and loss incurred in the distribution of zakat. It also discusses the possibilities of utilizing other sources than zakat to finance zakat related investment projects.

Both Chapter 7 and 8 deal with zakat investment in Malaysia. Chapter 7 provides the general background of zakat investment in Malaysia. This involves the laws and *fatwās* that govern the administration of zakat and the institutions that are responsible in managing zakat. In this chapter also, the study examines the amount of zakat collection and distribution in the country, in order to understand the trends of both and also to assess the amount of zakat that is available to finance investment projects.

In Chapter 8, the undertakings of zakat investment at two zakat institutions in Malaysia are thoroughly considered. This involves the discussions on the management structure in managing zakat investment, the allocations of zakat for investment activities, the forms of investment undertaken, the methods use in determining the investment projects and selecting the recipients, and lastly the management of the projects' risk. All these are analyzed to verify whether the management and operations of investment of zakat are in accordance to *Shari'ah*.

The final chapter contains the conclusion of the study and certain recommendations by the researcher.

Chapter Two

An Overview of Zakat Investment

2.0 Introduction

In this chapter we attempt to provide an overview of zakat investment. The chapter starts with the definitions of zakat investment before proceeding with the discussions about the forms of zakat investment as suggested by Muslim scholars. This will be followed at the end of the chapter by brief examples of how zakat investment is undertaken by the zakat institutions in three Muslim countries: Pakistan, Sudan and Kuwait.

2.1 Zakat Investment: The Definitions

2.1.1 Zakat

Zakat is the third pillar of Islam,⁶¹ and its legality dates back to the second year after Hijra.⁶² Among the verses that spoke of its legality is the following: "And be steadfast in

⁶¹ Islamic law considers one who denies it as a disbeliever. See Qur. 9: 34-5. °Abdullāh ibn Aḥmad ibn Qudāma, *al-Mughnī* (Beirut: Dār al-Kitāb al-°Arabī, 1972), v. 2, 434-8; Kamāl al-Dīn Muḥammad °Abd al-Wāḥid ibn al-Humām, *Sharḥ Faṭḥ al-Qadīr* (Beirut: Dār al-Kutub al-

prayer; practice regular charity; and bow down your heads with those who bow down (in worship)".⁶³ The Quran also says, "And those in whose wealth are a recognized right for the (needy) who asks and him who is prevented (for some reason from asking)".⁶⁴ An authentic hadith recounts that the Prophet (p.b.u.h.) said to his Companion Mu'ādh, when he was sent to Yemen as governor, "... inform them that Allah has made it obligatory for them to pay the zakat from their property, that it is to be taken from the wealthy among them and given to the poor".⁶⁵

Literally zakat means blessing, praise, purification, increase and goodness. It is so called as it blesses the wealth from which it is taken, purifies the payer and at the same time makes it grow.⁶⁶

Technically zakat is defined as a determined share of wealth prescribed by Allah which must be paid to designated recipients. The meaning of zakat is derived from multiple Quranic verses and hadiths related to zakat. The Quran says, "Of their wealth take alms that so thou might purify and sanctify them; and pray on their behalf, verily thy prayers are a source of security for them",⁶⁷ "...And they ask what they should spend (in charity). Say: That which is superfluous..."⁶⁸ and "The alms are only for the needy

⁶³ Ilmiyya, 1995), v. 2, 154; Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf al-Shīrazī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī* (Beirut: Dār al-Kutub al-'Ilmiyya, 1995), v. 1, 261-2.

⁶² Mansūr ibn Yūnus ibn Idrīs al-Bahūtī, *Kashshāf al-Qinā' an Matn al-Iqnā'* (Beirut: Dār al-Fikr, 1982), v. 2, 166; Muḥammad 'Alā' al-Dīn al-Ḥaṣkafī, *al-Durr al-Mukhtār Sharḥ Tanwīr al-Absār*, printed together with *Radd al-Mukhtār* (Beirut: Dār al-Kutub al-'Ilmiyya, 1994), v. 3, 170.

⁶³ Qur. 2: 43.

⁶⁴ Qur. 70: 24-5.

⁶⁵ Muḥammad ibn Ismā'īl al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, (Cairo: al-Maṭba'at al-Salafiyya, 1400H) v. 1, The Book of Zakat (24), hadith no. 1496, 463-4.

⁶⁶ Qur. 91: 9; 53: 32; 9: 102; 34: 39; 2: 276; Shams al-Dīn al-Sarakhsī, *Kitāb al-Mabsūṭ* (Beirut: Dār al-Ma'rifa, 1978), v. 2, 149-50; Muḥammad al-Shirbīnī al-Khaṭīb, *al-Iqnā' fī Halli Alfāz Abī Syujā'* (Fattani, Thailand: Maṭba'a Ḥalībī, n.d.), v. 1, 211; Muḥammad ibn al-Mukarram al-Ifriqī Ibn Manẓūr, *Lisān al-'Arab al-Muḥīṭ* (Beirut: Dār Ṣādir, n.d.), v. 14, 358.

⁶⁷ Qur. 9: 103.

⁶⁸ Qur. 2: 219.

and the destitute, and those who collect them, and those whose hearts are reconciled (to Islam), and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer; a duty imposed by Allah. Allah is Knower, Wise".⁶⁹ A hadith narrated by Abū Saʿīd al-Khudrī says that the Prophet (p.b.u.h.) said, "No alms to be taken from grain or dates until there is an amount equal to five camel-loads, nor are alms to be taken from (a herd of) less than 5 camels, nor are alms to be taken from less than 5 *awwāq*⁷⁰ (of silver)".⁷¹ It was narrated from Sālim ibn ʿAbdullāh from his father that the Prophet (p.b.u.h.) said, "On a land irrigated by rain water or by natural water channels or if the land is wet due to a nearby water channel, one tenth is compulsory (as zakat); and on the land irrigated by the well, half of one tenth is compulsory".⁷²

There are basically two types of zakat; *zakāt al-fiṭr* and *zakāt al-māl*.⁷³ *Zakāt al-fiṭr* is an amount equivalent to one *ṣāʿ* of Baghdad which is equivalent to 2.5 kilogram of staple food paid on or before the *fiṭr*⁷⁴ as an atonement for any shortcomings during the fasting worship of Ramadan. *Zakāt al-māl*, or zakat on wealth, on the other hand, is an amount paid for certain types of wealth owned which has reached certain minimum taxable limits (*niṣāb*) and completeness of *ḥawl*.⁷⁵

⁶⁹ Qur. 9: 60.

⁷⁰ A unit of mass used to measure silver which is equivalent to 200 *dirhams* at the time of the Prophet (plural form of *awqiyā*).

⁷¹ Muslim ibn al-Hajjaj al-Naysābūrī, *Ṣaḥīḥ Muslim*, trans. ʿAbdul Ḥamīd Siddiqi (Lahore: Sh Muhammad Ashraf, 1978), v. 2, Book 5, hadith no. 2134, 466; al-Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, v. 1, The Book of Zakat (24), hadith no. 1484, 460; Abū Dāwūd Sulaymān ibn Ashʿath al-Sijistānī, *Sunan Abī Dāwūd*, Kitab al-Zakā, Book III, trans. Ahmad Hassan (New Delhi: Kitab Bhavan, 1990), v. 2, hadith no. 1559, 94.

⁷² Al-Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, v. 1, The Book of Zakat (24), hadith no. 1483, 460.

⁷³ In this study, the term zakat will be used to cover both types of zakat. In cases where there is a necessity to discuss them separately, however, these two terms will be used accordingly.

⁷⁴ This is the day of celebration for Muslims after a full month of fasting in Ramadan.

⁷⁵ The point of time when zakat on wealth becomes an obligation varies from a full one year of ownership (*ḥawl*) for livestock, tradable goods, gold and silver; and at the time of yield for agricultural produce, the produce of silver and gold mines, treasure troves and spoils of war. See al-Khaṭīb, *al-Iqnāʿ*, v. 1, 211; Muḥammad Amīn ibn ʿĀbidīn, *Radd al-Mukhtār ʿalā al-Durr*

The Quran does not define clearly the zakatable assets of the *zakāt al-māl*. The assets which are clearly mentioned were only gold, silver and spoil of war⁷⁶. As for the rest of the zakatable assets, the Quran mentions them in a general form of wealth⁷⁷ including agricultural produce,⁷⁸ wealth which is earned⁷⁹ and drawn from the earth⁸⁰. In the hadiths also, there are only several items that are clearly cited. This includes gold, silver, silver coins, tradable goods, camel, cow, sheep, buried treasures of the earth (*rikāz*) and agricultural products including dates, wheat, barley and grapes.⁸¹ Al-Khayyāṭ maintains that the Quran is such in determining the zakatable assets because it wants to ensure the flexibility for the people in determining the zakatable assets.⁸²

The companions and the classical jurists added more items of wealth to the above types of wealth that are subject to zakat. The second caliph, ʿUmar (634-644 A.D.) added horses, lentils, peas and olives to the list of wealth that should be paid zakat.⁸³ The classical jurists added further the types of wealth that a Muslim must pay zakat for. They, however, are divided in the types of wealth that one is obliged to pay zakat. Some of the classical jurists particularly the Malikīs and Shāfiʿīs whose zakat base rely only on textual evidence impose zakat on fewer types of agricultural produces

al-Mukhtār Sharḥ Tanwīr al-Absār @ Hāshiah ibn ʿĀbidīn (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), v. 3, 171-3; al-Sarakhsī, *al-Mabsūṭ*, v. 1, 149; Ṣāliḥ ʿAbd al-Samīʿ al-Ābī al-Azhari, *Jawāhir al-Iklīl Sharḥ Mukhtaṣar al-ʿAllāmat al-Shaikh Khalīl* (Dār Iḥyāʾ al-Kutub al-ʿArabiyya, 1970), v. 1, 118.

⁷⁶ "And know that anything you obtain from the war booty – then indeed for Allah is one fifth ..." Qur. 8: 41.

⁷⁷ "Take (O, Muhammad) of their wealth charity by which you purify them ..." Qur. 9:103.

⁷⁸ "Eat of their fruit in their season, but render the dues that are proper on the day that the harvest is gathered". Qur. 2: 267.

⁷⁹ "O, you who has believed, spend of the good things of which you have earned". Qur. 2: 267.

⁸⁰ "... and of that which we have produced for you from the earth ..." Qur. 2:267.

⁸¹ Al-Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, 430-69.

⁸² A.A. al-Khayyāṭ, *Al-Zakā Taṭbīquhā wa Istithmāruhā* (Amman: Ministry of Awqaf and Islamic Affairs, 1993), 180.

⁸³ Mālik ibn Anas, *al-Muwatṭāʾ* li al-Imām Dār al-Hijrat Mālik bin Anas Riwayāt Yahya bin Yahya al-Andalusī (Beirut: Dār al-Gharb al-Islāmī, 1997), v. 1, 373; Siddiqi, *Early Development of Zakat Law and Ijtihad*, 85-105.

compared to the Ḥanafis who extend the imposition of zakat to nearly all types of produces.⁸⁴

The amount of zakat paid differs according to the source of income and the amount of zakatable wealth owned. There are four different rates of zakat mentioned in the Quran and hadiths. For gold, silver and goods for trade, the rate is fixed at 2.5 percent. For the agricultural produce the rate is fixed at 10 percent if they are irrigated naturally and becomes 5 percent if it is done manually or by employing some animals or machines. The spoil of war is subject to one fifth of zakat. Meanwhile, for livestock, the rates depend on the types and amount of animals owned.⁸⁵

Given the ambiguity of the Quran on the types of zakatable assets, contemporary Muslim scholars call for a review of the wealth that ones are obliged to pay. Al-Qaraḍāwī, Shaltūt, Kahf and Abu Saud, for examples, suggest that the determination should be based on the ultimate objectives of zakat (*maqāṣid al-Sharī'a*) as outlined in the Quran. Since the forms of wealth and their relative importance have changes over time, there are also concerns about lack of consistency in enforcing the payment. Some wealth which becomes less important will be zakated while others which have become more valuable may be excluded. As a result of which, some rich individuals will escape zakat while some poor farmers may have to pay above their ability.⁸⁶

Given these arguments, contemporary jurists have added new additions to the list of zakatable items including employment and professional income and return on capital

⁸⁴ Muṣṭafā Aḥmad al-Zarqā', "Jawānib min al-Zakā Taḥtāju ilā Nadhar Fiqhiy Jadīd", *al-Iqtisād al-Islāmiy*, 1: 2 (1984), 102-4; Sahabaddin Zaim, "Recent Interpretations of the Economic Aspects of Zakat", in *Management of Zakat in Modern Muslim Society*, 106-7.

⁸⁵ Qur. 8: 41; al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, 430-69.

⁸⁶ Al-Qaraḍāwī, *Fiqh al-Zaka*, vol. 1, 505; Shaltūt, *al-Islām: 'Aqīda wa Sharī'a*, 93; Mahmoud Abu Saud, *Contemporary Zakah* (Ohio: Zakat and Research Foundation, 1988), 113; Monzer Kahf, "Zakat: Unresolved Issues in the Contemporary Fiqh" *Journal of Islamic Economics*, 2: 1 (1989), 10-4.

invested on other than trade.⁸⁷ Peripheral zakatable items among the classical jurists such as productive fixed assets have been widely promoted and adopted by contemporary Muslim societies.⁸⁸ The Ḥanafis' liberalized view on zakat base for agricultural produces is broadly adopted in obliging the zakat on new commodities like palm oil and rubber.

Consequently, for the new zakatable items, a corollary issue arises concerning their rates and in some instances, the methods of zakatable assets recognition and calculation. Kahf suggests a rate of 2.5% on productive fixed assets given their growth over time and also their original value protection through the mechanism of depreciation reserves.⁸⁹ For the calculation of zakat on income, Muhammad al-Ghazali suggests the imposition a rate of 5% and 10% depending on the efforts spent in earning the income. Meanwhile, al-Qaraḍāwī differentiates the rate for earned income resulting from capital investment alone, earned income resulting from capital and labour together, and earned income resulting from labour alone. He suggests the rate of 10% for the earnings from capital investment only or a combination of capital investment and labour. For income earned from labour only, he suggests a rate of 2.5%.⁹⁰

Comparing between *zakāt al-fiṭr* and *zakāt al-māl*, the collection of *zakāt al-fiṭr* is very small and limited in nature since the amount obliged to be paid is only equivalent to the cost of one normal meal. The payment also is obliged only once annually per person. The later types of zakat, however, can be considerable given the multiple types of wealth that are zakatable and the higher rates imposed. Some of this wealth may produce even more than once per year of zakat.

⁸⁷ Al-Qaraḍāwī, *Fiqh al-Zaka*, vol. 1, 487-520.

⁸⁸ Monzer Kahf, "Zakāt al-'Uṣūl al-Thābitat al-Istithmāriyya", *al-Iqtisād al-Islāmiy*, 8 (1995), 31-73.

⁸⁹ Kahf, "Zakat: Unresolved Issues in the Contemporary Fiqh" *Journal of Islamic Economics*, 2: 1 (1989), 9-14.

⁹⁰ Al-Qaraḍāwī, *Fiqh al-Zaka*, vol. 1, 519-20.

The majority of jurists maintain that zakat is compulsory on all adult (who has reached maturity) sane Muslims, female or male, who has complete ownership of certain assets that has reached certain minimum taxable limits (*niṣāb*) and completeness of *ḥawl*.⁹¹ The jurists collectively agree that distribution of zakat is limited to the eight groups of recipients outlined in the verse 60 of *Sūra al-Tawba* and no new group is possible.⁹² The verse reads, “The alms (zakat) are only for the poor (*fuqārāʾ*) and the needy (*masākīn*), and those who collect them (*ʿāmilūn*), and those whose hearts are to be reconciled (*muʿallafat qulūbuhum*), and to free the captives (*riqāb*) and the debtors (*ghārimūn*), and for the cause of Allah (*fī sabīl li Allāh*), and (for) the wayfarer (*ibn al-sabīl*); a duty imposed by Allah. Allah is Knower, Wise”.⁹³

Those who are eligible to pay zakat may pay zakat directly to the recipients of zakat or may choose to pay them to the governing authority or any institutions appointed to collect and distribute zakat by the governing authority.⁹⁴

Spiritually, zakat inculcates the ideals of compassion, social justice and brotherhood. Economically, it is associated with the need fulfilment of the poor and deprived section of society and income distribution through transfer of wealth from the affluent in the society to the less fortunate. For the needy, zakat provides not only monetary assistance to help them with their basic needs which improves their physical wellbeing and increases their productivity but also gives them the opportunities and capabilities to

⁹¹ Sahnūn, *al-Mudawwana*, v. 1; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 3-4; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 436-40.

⁹² Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 689; Abū ʿUbayd, *al-Amwāl*, v. 4, 577; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 140; al-Shāfiʿī, *Kitāb al-Umm*, v. 3, 181.

⁹³ Qur. 9: 60. These groups of recipients are discussed in more details in 5.4.

⁹⁴ Ibn Qudāma, *al-Mughnī*, v. 2, 507; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 675; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 61-2; Sahnūn, *al-Mudawwana*, v. 1, 335.

escape poverty, bondage and enslavement.⁹⁵ At the same time, for the society at large, zakat increases effective demand for basic needs which encourages the production of socially desired goods and services instead of pushing for luxurious ones only. And for savers, zakat motivates them to invest their wealth in order to avoid the depreciation of their assets.⁹⁶

2.1.2 Investment

In general, investment refers to any activity that adds to tomorrow's potential income.⁹⁷ From an economic point of view, investment signifies activities involving capital expenditure that relinquish current consumption for possible returns in the future. The yield may be in tangible goods, such as production outputs and income, and intangibles, such as education⁹⁸, development and health, etc.⁹⁹

Investment involving some kind of tangible asset—such as land, machinery or factories—is known as real investment, while investment involving contracts written on pieces of paper which carry other's liabilities in providing the returns—such as bank deposits, common shares and loans—is known as financial investment.¹⁰⁰ There is also investment involving human beings for the purpose of enlarging their capacity by such

⁹⁵ Al-Qardawi, *Economic Security in Islam*, 66-7; Abu N.M. Wahid, "The Economic Implications of Zakah." *Contemporary Review*, 248: 1440 (Jan. 1986), 12-3.

⁹⁶ Abul Hasan M. Sadeq, "Ethico-Economic Institution of Zakah: An Instrument of Self-Reliance and Sustainable Grassroot Development", *Humanomics*, 12: 2 (1996), 52-3.

⁹⁷ Theodore Morgan, "Investment 'versus' Economic Growth", *Economic Development and Cultural Change*, 17: 3 (1969), 394.

⁹⁸ An example of investment on education is by allocating fund to improve the human capital of the workforce through training and education which can improve the skills and competences of workers. See G. Psacharopoulos and M. Woodhall, *Education for Development: An Analysis of Investment Choices* (New York: Oxford University Press, 1991) 1-4, 287-8.

⁹⁹ W.F. Sharpe, G.J. Alexander and J.V. Bailey, *Investments* (New Jersey: Prentice Hall, 1999), 1; Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsāt Iqtisādiyyat Fiqhiyyat Tahlīliyyat Muqārana*, 17.

¹⁰⁰ Sharpe et al., *Investments*, 1.

means as education, training and health care which is known as human capital investment.¹⁰¹

Since investment is an act that gives up current consumption for possible returns in the future, it involves time and risk.¹⁰² Some investments, especially those involving financial instruments, will take just a few days or months for the benefits to be realized but others, especially those which produce intangible yields, may take longer. An investment which takes a longer time to generate a return is deemed riskier given the uncertainties that occur during the period of investment. The risk of an investment is also associated with the asset's liquidity, economic and political environment, etc. Still, thorough analysis and prudent standards undertaken in any investment activity can protect it against loss under all normal or reasonable circumstances.¹⁰³

Among the medieval Islamic jurists, investment (*istithmār*) refers to an act to acquire income and profit or to develop wealth and increase it. The word *istithmār* is not directly used but other words which refer to a similar meaning as investment can be found in discussion of *al-qirād*, *al-muḍāraba*, *al-shirka*, *al-murābaḥa* and *al-salam*.¹⁰⁴

¹⁰¹ Yujiro Hayami, *Development Economics from the Poverty to the Wealth of Nations* (Oxford: Clarendon Press, 1997), 10; Morgan, "Investment 'versus' Economic Growth", 392-4; 401-2.

¹⁰² Sharpe et al., *Investments*, 1; Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 17.

¹⁰³ See Benjamin Graham and David L. Dodd, *Security Analysis* (New York: McGraw Hill Book Company Inc, 1971), 38. They maintained that "investment operation is one which upon thorough analysis, promises safety of principal and a satisfactory return".

¹⁰⁴ The words used are *al-tathmīr*, *al-tanmiyya*, *al-istinmāʾ*, and *al-ittijār*. See Ṣāliḥ ibn Muḥammad al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fī Ḥukmiha* (Saudi Arabia: Ṣundūq al-Khayr li Nashr al-Buḥūth wa al-Rasāʾil al-ʿIlmiyya, 2005) 45-7; See ʿAlī al-Barī Aḥmad al-Sharqāwī, *al-Istithmār al-Māliyyat al-Islāmiyya* (Egypt: Jamiʿat Asyūṭ, n.d.), 14. *Al-qirād* and *al-muḍāraba* refer to a kind of partnership where one partner provides a capital for another to invest in an enterprise. The only difference is that the term *al-qirād* was popularly used among the classical jurists in Hijaz (western Arabia) and the term *al-muḍāraba* is used among the classical jurists in Iraq. *Al-shirka* or known also as *al-mushāraka* is a contract of partnership. *Al-murābaḥa* is a sale contract whereby a seller agrees with the buyer to provide him a specific commodity with a stated profit added on to his cost. *Al-salam* is a sale whereby a seller promised to deliver the contracted asset at a future date and the price is paid at spot by the

Contemporary Muslim scholars have outlined many requirements to ensure that an investment activity is in accordance with *Sharīʿa* (Islamic law). All transactions and dealings in the investment activity must fully comply with the provisions of the Islamic law. Investment in prohibited goods, or involving the prohibitive elements like interest (*riba*), uncertainty (*gharār*) and gambling (*maysīr*) must be avoided.¹⁰⁵ According to Ali and al-Abjī, an Islamic investment must benefit the real need of humans through the contribution of material and thought according to specific priorities. In selecting feasible investment projects, projects that benefit the society most must be given priority compared to projects which benefit only a segment of society. Similarly, projects that benefit the poor must be given more credence than projects that provide luxurious goods to the rich.¹⁰⁶

2.1.3 Zakat Investment

Zakat investment has been defined by Muslim scholars as an activity which utilizes zakat with the aim of increasing the zakat recipients' future benefits. Al-Fawzān defines zakat investment as any dealings that involves zakat, nurtures it and benefits the recipients.¹⁰⁷ Similar definitions are also given by Shubayr and Muḥammad Farah except that they insist that the utilization of zakat in any investment activities must only employ Islamically approved development methods and principles. Investment

buyer. See Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Maktaba Ma'ariful Qur'an, 2007), 47, 95, 186; Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics and Practice*, (Cambridge: Cambridge University Press, 2006), 120.

¹⁰⁵ ʿAlī Aḥmad al-Sālūs, *al-Iqtisād al-Islāmī wa al-Qaḍāyā al-Fiqhiyyat al-Muʿāṣira* (Cairo: Dār al-Taqwā li al-Nashr wa al-Tawzīʿ, 1998), v. 1, 294-302.

¹⁰⁶ Syed Aftab Ali, "Social Preferences and Project Evaluation: An Islamic Perspective", in *An Introduction to Islamic Economics and Finance*, ed. Sheikh Abod et al. (Kuala Lumpur: Cert Publications, 2005), 185-207; Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 19; Kauthar ʿAbd al-Fattāḥ al-Abjī, "Dirāsāt Jadwā al-Istithmār fi Dhaw' Aḥkām al-Fiqh al-Islāmī", *Majallat Abḥāth al-Iqtisād al-Islāmī*, 2: 2 (1985), 7-8.

¹⁰⁷ Al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fi Ḥukmiḥā*, 62-3.

activities involving zakat must be devoid of the prohibitive elements like *ribā*, *gharār* and *maysīr*. They also insist that investment of zakat must fully comply with the principles of zakat to ensure that the obligation to pay zakat is fully performed and executed.¹⁰⁸

An investment is considered as zakat investment when zakat is used to fund the investment. This includes investment projects funded fully or partly by zakat. It also includes projects which are initially funded by other sources of financing but at a later stage are paid or bought with zakat funds.¹⁰⁹

Based on the above definitions of investment, zakat and zakat investment above, it can be concluded that any investment activities involving zakat should involve both tangible and intangible assets. Investment of zakat should not necessarily be confined to financial investments only but also should include development projects such as schools and hospitals. Furthermore, the purpose of zakat itself is not limited to benefit the recipients financially only but also socially and economically.¹¹⁰

Since the aim of investment is for future benefits, investment of zakat should be meant for the future benefits of the recipients and not for their current benefits. Thus an investment of zakat excludes expenditures spent to fulfil the recipients' current needs, like the disbursement of zakat given to cover basic necessities for current consumption purposes only as for food, clothing, shelter, basic education, transport and health care. Cows given as zakat which are utilized as food, for example, are not an investment of zakat in contrast to cows given for the purpose of enabling the recipient to start a farm.

¹⁰⁸ Muḥammad ʿUthmān Shubayr, "Istithmār Amwāl al-Zakā Ru'ya Fiqhiyya Mu'āsira", in *Abḥath Fiqhiyya Fī Qaḍāyā al-Zakat al-Mu'āsira*, ed. Muḥammad Sulaymān al-Ashqar et al., 2nd ed. (Amman: Dār al-Nafā'is, 2000), v. 2, 506; Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 20; Muṭamar Majma' al-Fiqh al-Islāmī, *Majallat Majma' al-Fiqh*, v. 3, part 1, 363-421.

¹⁰⁹ Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 20.

¹¹⁰ Shubayr for the matter maintained that investment of zakat should not be limited to financial investment only since the zakatable wealth itself comprise of multiple types of wealth. See Shubayr, "Istithmār Amwāl al-Zakā Ru'ya Fiqhiyya Mu'āsira", 505-6.

Similarly, zakat fund used for repairing the house of a poor person is not an investment of zakat in opposite to financing apartment blocks meant for temporary accommodation for the poor. The immediate needs fulfilled by the payment for remuneration of administrators of zakat (*‘āmilūn*), settlement of debt for debtors (*ghārimūn*), and assistances given to those in enslavement (*riqāb*) and travellers (*ibn al-sabīl*)¹¹¹ will also exclude them from being a part of zakat investment (which we termed as the functional purposes of the recipients). The reason is because the distribution of zakat for these purposes is also made to fulfil the current need of the recipients and with no intention for their future benefits.

Any investment involving the zakat fund must ensure that the payment and distribution of zakat is properly performed according to Islamic law. In other words, the investment must not only be in conformity with the Islamic principles regarding investment but must also fulfil the requirements and purposes of zakat payment and distribution. The investment’s benefits, for example, must be meant for the determined zakat recipients only because that is a fundamental requirement of zakat distribution.

2.2 Zakat Investment among Modern Scholars

Modern Muslim scholars propose investment of zakat for several reasons. Channelling zakat funds into long-term investments is considered necessary to fasten the pace of development in Muslim countries. Given the prevalent low per capita income and low productivity of many Muslim countries, zakat can become the new source of funds to finance economic development.¹¹²

¹¹¹ All these will be discussed in detail in Chapter 5.

¹¹² Anwar, “Financing Socio-Economic Development with Zakat Funds”, 16.

Zakat as an obligation on the affluent provides the poor and needy with cash and kinds that enable them to fulfil their basic needs. Provisions of continuous assistance to fulfil the basic needs of the poor and needy, especially for those who are still productive, however, may cause a social security trap in which the recipients will have no incentive to work.¹¹³ The ultimate objective of zakat is to emancipate the poor recipients from perpetual dependence on it.¹¹⁴ Thus, for those poor who are capable of working, scholars suggest that they are not only provided with money to cover their basic needs but also appropriate market incentives, physical infrastructure and institutions which enable them to participate in the labour market and earn their own income.¹¹⁵

At the same time, studies have shown that the poor and needy will most likely remain poor because of their limited resources and opportunities. They have limited human, physical and financial capital needed to participate in an economic activity that will provide them with sufficient income. Muslim scholars like Pramanik and Ahmed believe that zakat plays an important role as a source of financing needed to boost the limited resources of the poor and the needy. Zakat is also considered as a public source of funds that can empower them with opportunities that enable them to break away from poverty. Pramanik and Ahmed argue that for those who have fewer capabilities to compete due to lack of capital as well as skills, the state must provide not only the basic needs but also adequate opportunities for them to participate in the economy. Such aims can be achieved through development projects financed with zakat.¹¹⁶

¹¹³ M.A. Mannan, "The Economics of Poverty in Islam with Special Reference to Muslims Countries", in *Distributive Justice and Need Fulfilment in an Islamic Economy*, ed. Munawar Iqbal (Leicester: The Islamic Foundation, 1986), 331.

¹¹⁴ Faridi, "Capital Formation, Economic Growth, and Public Budgeting in an Islamic Framework", 111.

¹¹⁵ The World Bank, *World Development Report 1990* (New York: Oxford University Press, 1990), 138.

¹¹⁶ Ataul Huq Pramanik, *Development and Distribution in Islam* (Petaling Jaya: Pelanduk Publications, 1993), 59-60; Ahmed, *Role of Zakah and Awqaf in Poverty Alleviation*, 64.

For those poor that are capable of working, Muslim economists argue that zakat can provide them with the capital needed as well as opportunities for employment. Ahmed and M. Sadeq believe that specific programmes should be designed to provide the poor with support for education and skill development that may assist their ability to earn their own income and become independent of zakat in the future. They suggest that zakat is spent to supply physical capital for the workers (like a taxi, sewing machine, etc.) and financial capital to potential entrepreneurs among the poor recipients that enable them to start a business.¹¹⁷ In addition to these, Faridi and Badawi suggest the use of zakat to finance the education and training rehabilitation of potentially poor worker to improve their productive capabilities.¹¹⁸ The state for Faridi should purchase costlier production and marketing equipment for the poor to use. The equipment should be managed by the state and used freely by the poor.¹¹⁹

Suleman and al-Qaraḍāwī suggest the establishment of a labour-intensive workplace which can provide employment to numerous recipients such as manufacturing factories that are financed by zakat.¹²⁰ Al-Khayyāṭ and al-Fādanī argue that this type of establishment should cater for both the recipients' opportunity for employment and also their rights to consumer goods. Thus they suggest that zakat revenue should finance business projects with production concentration like manufacturing plants and

¹¹⁷ Ahmed, *Role of Zakah and Awqaf in Poverty Alleviation*, 64; Abulhassan M. Sadeq, "Development Finance in an Islamic Economy: Domestic Sources", in *Financing Economic Development: Islamic and Mainstream Approaches*, ed. M. Sadeq (Selangor: Longman Malaysia, 1992), 17.

¹¹⁸ Zaki Badawi, "Zakat – a New Source of Development", *Islamic Banker*, 4 (1996), 19.

¹¹⁹ Faridi, "Capital Formation, Economic Growth, and Public Budgeting in an Islamic Framework", 111.

¹²⁰ R.M.U. Suleman, "Distributive Aspects of Zakat", <http://www.financeinislam.com/article/41/1/148> (accessed on 8 Nov. 2007).

business enterprises that are intended to make available to the poor certain important consumer goods like food and textiles.¹²¹

For those non-able bodied recipients that are incapable of work like the disabled, children and old people from the poor families, scholars suggest that zakat is invested to provide them with a stable and continuous income. Apart from payment of zakat to fulfil their basic needs, a portion of zakat should be invested in income generating projects. Earnings from these projects can provide them with the necessary future day to day income and they will no longer be solely dependent on zakat distribution. M. Sadeq suggests that this group of people is given entitlement to shares of productive enterprises financed by zakat. Earnings from the shares can provide them with the necessary income.¹²² The earnings for Anwar can be generated by an investment fund that is funded by zakat. Zakat funds should be channelled into the investment fund and used to purchase shares from selected companies. The shares will be transferred to individual recipients where they can gain dividends or redeem the shares at their market value.¹²³

Apart from financing economic development projects, investment of zakat could also provide and augment the social services for the recipients. Studies on poverty also maintain that efficient labour-intensive incentives must be supported by adequate provision of social services like education, health-care and social care to reduce poverty.¹²⁴ The reason is that these social services, like educational programmes, for example, not only improve the ideological and cultural receptivity of the poor but

¹²¹ ‘Abd al-‘Azīz al-Khayyāṭ, “Ra’y fi Tawzīf al-Zakā wa Istithmārihā”, in *Majalla Majma‘ al-Fiqh al-Islāmī*, no. 3, v. 1, 371; ‘Abd al-Qādir al-Fādānī, “Tamwīl al-Mashrū‘āt al-Intājiyya wa Tamlikuhā li al-Mustaḥiqqīn: Al-Sūdān” (paper presented in al-Mu‘tamar al-‘Ālamī al-Sābi‘ li al-Zakā, 24 - 25 March 2007, Kuwait), 64.

¹²² M. Sadeq, “Ethico-Economic Institution of Zakah”, 55.

¹²³ Anwar, “Financing Socio-Economic Development with Zakat Fund”, 17.

¹²⁴ The World Bank, World Development Report 1990, 138.

enhance their income-earning capacity as well.¹²⁵ Zakat revenue can be used to fund the development and maintenance of the facilities that provide services like hospitals, clinics, shelters, education and training centres.¹²⁶

On top of the above reasons, scholars also consider zakat investment as a feasible mechanism to increase the zakat assets. Al-Fawzān maintains that investment of zakat can increase its value through the generated profits.¹²⁷ Increasing the value of the zakat fund will amplify the benefits of zakat as more zakat can be given to the recipients and at the same time more recipients can receive zakat. Muḥammad Farah believes that investment is the most feasible method in dealing with the undistributed zakat revenue. Investment will not only generate more profit for the zakat revenue but can also prevent it from devaluation due to inflation.¹²⁸ According to al-Qaradāwī, the most suitable type of investment for funds awaiting disbursement decisions, for example, during the period taken to determine the deserving recipients, is in financial instruments such as deposits in banking institutions, shareholding in unit trusts or private companies, etc. This is because this type of investment is known to carry minimal risk and is easily liquidated.¹²⁹

The above discussions reveal that Muslim scholars have suggested zakat investment for many reasons. Utmost was the long-term benefits of the recipients both economically

¹²⁵ Faridi, "Theory of Fiscal Policy in an Islamic State", 28-9.

¹²⁶ See comments made by al-ʿIbādī in *Majalla Majmaʿ al-Fiqh*, v. 3, part 1, 393; Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 181-2; Mohd Saʿad and Noormala, "Lembaga Zakat Selangor: Lembaran Baru PZS", *Asnaf*, 1 (2006), 6-7; al-Fādanī, "Tamwīl al-Mashrūʿāt al-Intājiyya wa Tamlikuhā li al-Mustaḥiqqīn: Al-Sūdān", 64.

¹²⁷ Shubayr, "Istithmār Amwāl al-Zakat Ruʿya Fiqhiyyat Muʿāṣira", v. 2, 506; al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fī Ḥukmihā*, 62-3.

¹²⁸ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 101; Anwar, "Financing Socio-Economic Development with Zakat Funds", *Journal of Islamic Economics*, 4: 1 & 2 (1995), 18-9; See also comments made by al-Qaradāwī and al-ʿIbādī in Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, v. 3, part 1, 386-7, 393.

¹²⁹ See comments made by al-Qaradāwī in *Majalla Majmaʿ al-Fiqh*, v. 3, part 1, 386-7; See also comments made by al-ʿIbādī in *Majalla Majmaʿ al-Fiqh*, v. 3, part 1, 393.

and socially. Investment of zakat was also the ideal mechanism to ensure that undistributed zakat did not remain idle and corroded by inflation. Furthermore, through investment the undistributed zakat could be increased in value and utilized to benefit the recipients of zakat.

Muslim scholars also suggest many forms of zakat investment for the poor not only to reduce their poverty but with the ultimate aim of making them financially independent of zakat. These include those who are capable of work and those who are unable to earn their own income. Interestingly, from the forms of zakat investment suggested by scholars, we find that the states, or zakat institutions as its representatives, play the most important role in managing the investment of zakat. Expenditures of zakat to provide costly equipment, to establish labour-intensive work-places, and to develop and maintain supporting facilities for the poor should be managed and organized by an entity that has the right and authority to manage zakat and at the same time has other supporting facilities to realize them.

2.3 Zakat Investment in Muslim Countries

In practice, many Muslim countries undertake some forms of zakat investment. The forms of zakat investment undertaken in each country vary widely from typical individual recipient's tool assistance and expenditures for the dissemination of Islam to more complex investment schemes such as collective irrigation and agricultural system, acquisition and management of real properties on behalf of the recipients, investment of surpluses of zakat collection, and human capital investment.

Below is a brief description of the forms of zakat investment in three Muslim countries which have a centralized zakat institution responsible in collecting and disbursing

zakat. Prior to this, the institution responsible in managing zakat and its operation is also briefly discussed.¹³⁰

2.3.1 Zakat Investment in Pakistan

In Pakistan, the collection of zakat is centralized at the state level when the Zakat and Ushr Ordinance was enacted on June 1980. As a consequence of the ordinance, a Central Zakat Administration (CZA), the national level zakat administration agency was set up and given the authority to administer the collection and disbursement of zakat and issue regulations regarding its management.¹³¹

The types of zakat which are collected by the state and their valuation are based on two schedules. Under the 1st Schedule, zakat on savings via financial instruments like bank savings accounts, deposit receipts, fixed deposit receipts, all types of savings certificates, investment units, unit trusts, shares, debentures, annuities, etc., is deducted compulsorily from Pakistani Muslims (persons and organizations) on the first of Ramadan. The rates are 2.5% on the financial assets valued over Rs1000 (in 1980) and Rs3000 (in 1983). The amount of zakat deducted by the financial institutions and by the Public Debt Office at source is deposited in the Central Zakat Fund (CZF)¹³² and from here will be distributed to the Provincial Accounts. In the 2nd Schedule, assets liable to zakat including cash, gold, silver, livestock, etc., are religiously compulsory but in

¹³⁰ These case studies are meant no more than to give examples of zakat investment undertaken by Muslim countries.

¹³¹ Muhammad Akram Khan, "Legal, Administrative and Financial Control", in *Institutional Framework of Zakah: Dimensions and Applications*, ed. El-Ashker et al. (Jeddah: IDB and IRT, 1995), 67; Grace Clark, "Pakistan's Zakat and Ushr System from 1979 to 1999", in *Pakistan 2000*, ed. Charles H. Kennedy and Craig Baxter (Maryland: Lexington Books, 2000), 143-4.

¹³² Central Zakat Fund according to Section 7 (a), Zakat and Ushr Ordinance 1980 is the fund which all these sources are credited into; (i) the Zakat deducted at source; (ii) the Zakat paid into it voluntarily including voluntary contribution made by Pakistani citizens and other persons residing abroad; (iii) the transfers, if any, from the Provincial Zakat Funds; and (iv) the grants, *atiyyat* and any other receipts including voluntary contributions made by Pakistani citizens and other persons residing abroad.

practice are voluntary. The voluntary zakat is collected by voluntary local collection committees which will transmit the zakat to the Provincial Zakat Councils (PZCs) for disbursement.¹³³

Basically, there are five hierarchical levels of zakat administration; central, provincial, district, sub-divisional (*tehsil*) and local. The closer to the top, the more involved the councils are to the overall coordination, planning and policy determination and the closer to the bottom, the more involved they are with operations. The PZCs, for example, may formulate rules and procedures related to the administrative aspects of zakat disbursement in the provinces but are required to follow the policies set forth by the Central Zakat Council. The PZCs disburse zakat through the District and Sub-Divisional Committees to Local Zakat Committees (LZCs)¹³⁴ which will distribute zakat to the recipients. At the same time, the PZCs also monitor the affairs at these three levels of zakat committees.¹³⁵

From the collected zakat, the CZF retains a portion of the proceeds, which is invested on a non-interest basis.¹³⁶ According to the Auditor General's report, during the year 2006-07, zakat gathered by the CZF totalled Rs19.509 billion while only Rs5.354 billion was disbursed, implying that Rs14.154 billion of zakat funds remained unutilized.¹³⁷ The distributed zakat is allocated to each province according to each population,

¹³³ Clark, "Pakistan's Zakat and Ushr System from 1979 to 1999", 143.

¹³⁴ Among the functions of the Local Zakat Committees was to determine eligible recipients of zakat, to disburse the fund and to keep records of disbursements and meetings. See Clark, "Pakistan's Zakat and Ushr System from 1979 to 1999", 144-5.

¹³⁵ Imran Ashraf Toor and Abu Nasar, "Zakat as A Social Net: Exploring the Impact, Interim Poverty Reduction Strategy Paper (I-PRSP)", Research Report no. 53, (Government of Pakistan, November 2001), 3; Khan, "Legal, Administrative and Financial Control", 35, 65.

¹³⁶ The retention was a prudential measure taken to ensure that the zakat allocated to the provinces was actually disbursed before further allocations were wired to the provincial accounts. See Clark, "Pakistan's Zakat and Ushr System from 1979 to 1999", 150.

¹³⁷ "Rs 14bn Central Zakat Fund Lapsed during Fiscal 2006", *Daily Times*, 31 Dec. 2008, http://www.dailytimes.com.pk/default.asp?page=2008\12\31\story_31-12-2008_pg7_38 (accessed on 28 June 2009).

although this criterion is not strictly followed. Distribution of funds by the PZCs is formula driven, with 60% going to the LZCs and 40% to institutions (e.g. public hospitals, schools, vocational training institutions, etc.).¹³⁸

Due to high incidences of poverty in the country, zakat is distributed only to the *fuqārā* (indigent) and *masākīn* (poor) besides the *‘āmilūn* (administrator of zakat)¹³⁹. The disbursement will be made to the recipients determined by the LZCs and is made to the indigent and the poor, in particular orphans, widows and the disabled, either directly or indirectly through religious *madrasa* or educational, vocational or social institutions, public hospitals, charitable institutions and other institutions providing health care.¹⁴⁰

Through these LZCs, zakat funds are allocated for the economic rehabilitation of the poor which enables them to set up small businesses. Most rehabilitation grants range from Rs500 for the purchase of a sewing machine or small tools to Rs5000 for a water buffalo.¹⁴¹ For the recipients’ human capital development, CZF disburse zakat to the social welfare institutions running the programmes as payments for the fees for vocational training provided for the recipients. CZF also provides educational stipends to the students indirectly through the local educational institutions.¹⁴²

¹³⁸ Toor et al., “Zakat as A Social Net: Exploring the Impact”, 3.

¹³⁹ The expenses of the zakat committees were financed from zakat proceeds to an amount not exceeding 10% of the proceeds. Any extra expenses would be paid by the Pakistani government. See Khan, “Legal, Administrative and Financial Control”, 53.

¹⁴⁰ Section 8 of the Zakat and Ushr Ordinance, 1980 states, “The moneys in a Zakat Fund shall be utilized for the following purposes, namely, - (a) assistance to the needy, the indigent and the poor particularly orphans and widows, the handicapped and the disabled, eligible to receive zakat under Shariah for their subsistence or rehabilitation, either directly or indirectly through *deeni madaris* or educational, vocational or social institutions, public hospitals, charitable institutions and other institution providing health care ... (b) assistance to the needy persons affected or rendered homeless due to natural calamities like floods and earthquakes and for their rehabilitation ; expenditure on the collection, disbursement and administration of Zakat and Ushr ...”

¹⁴¹ Clark, “Pakistan’s Zakat and Ushr System from 1979 to 1999”, 145.

¹⁴² Toor et al., “Zakat as A Social Net: Exploring the Impact”, 3. See also Asian Development Bank, *Pakistan Social Protection Strategy - Development Study*,

Most notable is that, like other Islamic laws in the state, the law observed in the investment of zakat also favours the Ḥanafis tradition. In both types of zakat investment above, whether for the economic rehabilitation of the poor or their human capital development, the necessity of a direct transfer of zakat to individual recipient (*tamlīk*) is emphasized. This is also the reason behind the hesitancy to fund buildings, roads and other infrastructure which do not allocate an ownership title to an individual recipient with the zakat fund.¹⁴³

2.3.2 Zakat Investment in Sudan

The management of zakat was first institutionalized in Sudan with the enactment of the Law of the Zakat Fund on 23 August 1980 which saw the establishment of the al-Majlis al-Aʿlā li Umanāʾ al-Zakā (High Council of the Trustees of Zakat) under the auspices of the supreme Council for Awqaf and Religious Affairs. In 1986, an agency responsible for the management of zakat, Dīwān al-Zakā (Zakat Chamber) was established¹⁴⁴ whose main roles include daily administrative operations, appointment of officers, freezing payable zakat which has not been paid, collection of payment of zakat, distribution of zakat to determined recipients, monitoring the district operations, etc.¹⁴⁵ The High Council of the Trustees of Zakat will determine the chamber's policies and ensure that its operations are conducted accordingly.¹⁴⁶

The organizational structure for the management of zakat is hierarchical, where activities like auditing, supervision, disbursement for some group of recipients and

<http://www.adb.org/Documents/Reports/Consultant/37008-PAK/default.asp> (accessed on 17 Nov. 2009), 35.

¹⁴³ Khan, "Legal, Administrative and Financial Control", 69. Among the four main Sunni schools of law, the Ḥanafis' view on *tamlīk* is the strictest. A detailed discussion on this will follow in Chapter 5.

¹⁴⁴ Khan, "Legal, Administrative and Financial Control", 32.

¹⁴⁵ Sec. 6, Zakat Laws 2001 (Sudan).

¹⁴⁶ Sec. 7 and 8, Zakat Laws 2001 (Sudan).

collection are made by the central management although some decision making is also performed at the provincial levels.¹⁴⁷ In 2005, 9% of the collected zakat was disbursed centrally according to the discretion of the High Council of Trustees for Zakat through the Zakat Chamber in Khartoum to *mu'alafat qulūbuhum, fī sabīl li Allāh* and *riqāb*. The rest is distributed locally to the other five groups of recipients according to the discretion of the High Council of Trustees for Zakat and local treasurer of zakat through established mosque committees which collaborated with the Zakat Chamber.¹⁴⁸

In distributing zakat proceeds, the Sudanese Zakat Fund gives priority to the *fuqarā'* and *masākīn* by allocating 60 percent of zakat revenue to them.

Table 2.1 Percentage of Allocations of Zakat According to Groups of Recipients in Sudan in 2004 and 2005.

Group of Recipients	2004	2005
<i>Faqīr and Miskīn</i>	61.0%	65.0%
<i>Ibn Sabīl</i>	0.5%	0.5%
<i>Ghārimūn</i>	6.0%	6.0%
<i>Fī Sabīl li Allāh</i>	5.0%	3.0%
<i>Mu'allafat Qulūbuhum and Riqāb</i>	6.0%	6.0%
<i>Āmilūn</i>	14.5%	14.5%
Operating Costs (<i>Insya'at wa al-Taysīr</i>)	7.0%	7.0%
Total	100.0%	100.0%

Source: <http://www.zakat-sudan.org/index543f.html?page=subject2&pid=16> (accessed on 4 Dec. 2009).

¹⁴⁷ Khan, "Legal, Administrative and Financial Control", 48.

¹⁴⁸ See also Carey Gordon, "The Legal Regime of Public Finance in the Sudan: The Legacy of Nimeiri", *Journal of African Law*, 30: 1 (Spring, 1986), 29; Khan, "Legal, Administrative and Financial Control", 46-50.

There are many types of zakat investment undertaken by the Zakat Chamber, and most of these are targeted for the poor.¹⁴⁹ Zakat has been mobilized to finance social and production centres like textile factories, olive and soap manufacturing factories; inputs of production to individual, and group micro enterprises like provisions of rickshaws, tractors, and flouring mills; agricultural irrigation systems and services in food security, which includes the establishment of dairy farms, ownership of livestock and other animal husbandry services.¹⁵⁰ Zakat is also utilized to finance the establishment of hospitals and pharmacies, and acquisition of treatment tools.¹⁵¹

It is worth noting that in investing zakat in projects like hospitals and national pharmacies, for example, the users and beneficiaries are not limited to the recipients of zakat only. Treatments are given not only to the poor member of society but also other residents.¹⁵² There would be no concern if the allocations are made from the portion of the *fī sabīl li Allāh* group, but given the high amount of allocations spent for the poor and a very low amount of allocation for the *fī sabīl li Allāh*, as shown in Table 2.1, it is very likely that the allocations are sourced from the shares of the poor.

2.3.3 Zakat Investment in Kuwait

Kuwait Zakat House (*Bayt al-Zakā*), the agency responsible for the collection and distribution of zakat in Kuwait, was established on 16 January 1982, under the

¹⁴⁹ It is clearly stated in Sec. 6(11) of the Zakat Laws 2001 (Sudan) that zakat can be utilized to enable the *faqīr* and *miskīn* to own tools which assist their earning abilities until they no longer depends on zakat.

¹⁵⁰ Agwa Babiker Abdalla, "The Impact of the Sudanese General Women's Union Savings and Micro-Finance/Credit Projects on Poverty Alleviation at the Household Level with Special Emphasis on Women's Vulnerability and Empowerment" (PhD Thesis, University of South Africa, 2009), 164, 169-70.

¹⁵¹ See <http://www.zakat-sudan.org> for further kinds of zakat investment that are undertaken by the Zakat Chamber of Sudan.

¹⁵² See <http://www.zakat.sudan.org> regarding the projects of the Zakat Chamber on national pharmacies.

supervision of the Ministry of Awqaf and Islamic Affairs. The payment of zakat to the agency at the time was only voluntary.¹⁵³

On 27 November 2006, a new law (Law No. 46 of 2006) was issued imposing zakat at 1% of net income on public and closed share holding companies wholly owned by Kuwaiti and Gulf Co-operation Council nationals. The zakat law became effective from 10 December 2007 with the issuance of the Ministerial resolution no. 58 of 2007 on 25 November 2007 which outlined the executive regulations.¹⁵⁴

It should be noted that the Kuwait Zakat House receives and collects not only zakat but also other voluntary alms like *ṣadaqa*, gifts, *waṣīyya*, and government aids, etc.¹⁵⁵ In 2008, the collected zakat amounted to KWD11,060,553 which was about 27.3% of the total amount of alms and aids (KWD40,499,422) received by the Zakat House.¹⁵⁶

Most of the Zakat House's revenue is spent on providing basic need assistance for the poor such as for food, water and health care. Some of the revenue has been invested in developing the recipients' human capital assets through education grants for studying in special institutions offering courses in computer, secretarial and technical studies which enable them to participate in the employment market.¹⁵⁷

In 2008, 25% of the distributed revenue worth KWD9,594,827 was dispensed to 38 countries outside of Kuwait. Throughout the years, numerous overseas' investment projects were sponsored by the Zakat House, including rehabilitation programmes

¹⁵³ Khan, "Legal, Administrative and Financial Control", 70.

¹⁵⁴ The resolution was published in the official gazette on 9 December 2007 issue no. 848. See "Kuwait Zakat Law", *Arab Times*, 6 Jan. 2008; KPMG, *MESA Tax Newsletter*, 4 (April 2007), 7, <http://www.in.kpmg.com/tax%20alert/pdf/MESA-TaxNewsletter-FINAL.PDF> (accessed on 20 June 2009).

¹⁵⁵ *Ṣadaqa* here refers to voluntary alms. *Waṣīyya* is inheritance made to non-family members and which cannot exceed a third of the deceased wealth.

¹⁵⁶ Bayt al-Zakā of Kuwait, *Annual Report 2008*, 35.

¹⁵⁷ See http://www.zakathouse.org.kw/AxCMSwebLive/ar_projects_loc_2_2.cms, (accessed on 20 Dec. 2009).

whereby the poor is given financial and material assistance to set up businesses, and training, construction of development centres, hospitals, education and training institutions, etc.¹⁵⁸ Most likely, the overseas investments were made because of the high surpluses of alms collection at the Zakat House given the high per capita income of Kuwait's population (estimated per capita income in 2008 was US\$57,400) and the non-existence of incidences of extreme poverty in the country.¹⁵⁹

All in all, given that zakat represents less than a third of the collected alms in the Zakat House and its emphasis on segregating the expenditures made from zakat and other alms,¹⁶⁰ it is more likely that the investments are made from sources other than zakat.

2.3.4 Conclusion

All things considered, it shows that zakat investment is undertaken in Muslim countries though it varies from country to country. In investing zakat, their priority is always for the benefit of local recipients of zakat and in particular the poor among them.¹⁶¹

¹⁵⁸ http://www.zakathouse.org.kw/AxCMSwebLive/ar_projects_int_1.cms. See also a report of Zakat House activities in 2008 which is accessible at http://www.zakathouse.org.kw/controlpanel/newsmanager/templates/zakat_ar.aspx?articleid=257&zoneid=5.

¹⁵⁹ See *CIA World Factbook 2009*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ku.html> (accessed on 27 Nov. 2009). With the average expenditure of the Kuwaiti poor accounting ten times higher than the international poverty line of US\$1.08 per day in 2005, extreme poverty and hunger were considered eradicated in the State of Kuwait. See www.undp-kuwait.org/undpkuw/poverty.html (accessed on 23 Dec. 2008).

¹⁶⁰ See the statement made by the Head of Board of Administration for the Zakat House in Bayt al-Zakā of Kuwait, *Annual Report 2008*, 13.

¹⁶¹ Sec. 16 (11) and (12), Zakat Laws 2001 (Sudan). In distributing zakat, priority was given to the *fuqara'* and *masākin* by allocating about 60% of zakat revenue to them. See Unicons Consultancy Ltd., "A Vision for the Development and Expansion of the Microfinance Sector in Sudan" (paper presented for the Central Bank of Sudan, Khartoum, July 2006), 39, http://www.cbos.gov.sd/MFU/Microfinance_visionE_CBOS.pdf (accessed on 7 Dec. 2009).

In the case of Pakistan, for example, even though part of the zakat collected in the country is massed at the Central Bank of Pakistan, the allocations of zakat are handed over to the Provincial Zakat Committees to be disbursed by Local Zakat Committees. As such, investment of zakat made for the rehabilitation of the poor, like fees for vocational training, is made through the local social welfare institutions running the programmes, and similarly, educational stipends are given to the students through local educational institutions. Similar prioritization was also noted in Sudan. The Sudanese law provides that zakat proceeds of each province should be disbursed within the same province only, unless it is so decided by the President of the Republic.¹⁶²

The above discussions also reveal that the distribution of zakat in these countries prominently favoured the poor. As a result, expenditures for investment of zakat also tend to favour the poor. Another note that is observed is the lack of allocations made for *fi sabīl li Allāh* even though this group provides many opportunities for the zakat institutions to invest the zakat, as will be shown later.

In terms of the variety of zakat investment in these countries, the types of zakat investment undertaken in Sudan are outstanding. The most likely explanation is the readiness of the Sudanese zakat institution to adapt more than one school of Islamic laws compared to, for example, in Pakistan which favours the Ḥanafis tradition. Congruent to this, the Zakat Chamber of Sudan not only invest in projects which directly give the ownership to the poor but also in projects which are collectively owned by them or give the recipients beneficial ownerships only.

¹⁶² Khan, "Legal, Administrative and Financial Control", 46.

2.4 Conclusion

Based on the definitions of zakat investment above, three salient features of zakat investment are noted. First, investment of zakat is meant not for the current benefits but for the future benefits of the recipients. Second, an investment activity can involve both tangible and intangible assets. Thus in defining investment of zakat, we should not confine it to financial investments only. Expenditures of zakat in long-term development projects that provide economic benefits only to the recipients should also be considered as an investment activity. And third, any investment involving zakat funds must ensure that the investment activities are performed according to Islamic law. The investment must also fulfil the Islamic principles that are outlined in the payment and distribution of zakat and the purposes underlying both.

In the framework of the zakat system, the study finds that zakat investment functions both as a method of zakat distribution and a vehicle in increasing the value of the collected zakat. As a distribution tool, zakat investment fulfils an array of long-term economic and social needs of the recipients, whereas as an investment vehicle that can increase the collected zakat value, it can ensure that more funds than the collected zakat revenue can be disbursed to the recipients.

In the following chapters, the study will first examine the evolution of zakat laws throughout Islamic history and try to see how this has shaped the introduction of zakat investment in Malaysia. Next, the study will examine the *maqasid al-Shari'a* (the intentions of the laws) behind the obligation of zakat before proceeding with an analysis of the Islamic legal concepts pertaining to the payment and distribution of zakat that are related to zakat investment in the subsequent chapters. The understanding of these purposes and concepts is important for they will guide the study in determining the compliancy of the management of zakat investment in Malaysia.

Chapter Three

The Historical Development of Zakat Investment

3.0 Introduction

In the previous chapter, the study discussed the definitions and the forms of zakat investment as suggested by Muslim scholars and also as implemented by Muslim countries.

This chapter deals with the history of the development of zakat investment. The first part of the chapter examines the development of zakat spanning from the time of the Prophet Muhammad until the early twentieth century. During this period, the chapter looks closely at the development of zakat laws, particularly those related to the disbursement of zakat. These laws are important in the study of zakat investment as they later become the foundation of modern juristic views on zakat investment.

The second part of the chapter deals with the development of zakat investment in the modern era beginning from the early twentieth century until now. This part starts with the development of thoughts in Islamic economics which gave birth to the ideas of utilizing zakat as a source of Muslim economic development. Next, it examines the *fatwās* which were issued by established Islamic organizations on zakat investment.

These *fatwās* are pertinent because they provide the juristic basis for the viability of zakat investment and also the requirements that must be complied with in its implementation, to ensure a complete execution of the payment of zakat.

The final part of the chapter focuses on the historical development of zakat investment in Malaysia. It begins with the administration of zakat in the pre-independence period. Next, it examines several factors that enable the local zakat institutions to undertake zakat investment. Lastly, it discusses the administrative Islamic law enactments and the *fatwās* that govern the administration of zakat, the investment of zakat in particular.

3.1 Zakat Investment from the Time of the Prophet until the Early 20th Century

As the third pillar of Islam, zakat received considerable attention from the Quran and the Sunna. The word zakat which refers to its religious meaning occurs thirty times in the Quran, twenty eight times mentioned together with the word prayer.¹⁶³ Similar attention was also given to zakat from the Sunna which provides explanations and details to the general verses of the Quran. Special chapters on zakat may be found in all prominent books of hadith like the *al-Jāmi' al-Ṣaḥīḥ*, *Ṣaḥīḥ Muslim*, *Sunan Abī Dāwūd* and so forth.¹⁶⁴

In relation to the distribution of zakat, the Quran clearly outlines the groups who are eligible recipients of zakat. The Quran says in Sura al-Tawba, “The alms (zakat) are only for the poor (*fuqārā'*) and the needy (*masākīn*), and those who collect them (*‘āmilūn*), and those whose hearts are to be reconciled (*mu'allafat qulūbuhum*), and to free

¹⁶³ Yūsuf al-Qaradāwī, *Fiqh al-Zakā Dirāsāt Muqārana li Ahkāmihī wa Filsifātihi fi Ḍaw'i al-Qur'ān wa al-Sunna* (Beirut: Dār al-Irshād, 1969), v. 1, 32.

¹⁶⁴ See for examples the chapters on zakat in al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ*, v. 1, 430-68; al-Naysābūrī, *Ṣaḥīḥ Muslim*, v. 2, 389-445; and al-Sijistānī, *Sunan Abī Dāwūd*, v. 2, 93-133.

the captives (*riqāb*) and the debtors (*ghārimūn*), and for the cause of Allah (*fī sabīl li Allāh*), and (for) the wayfarer (*ibn al-sabīl*); a duty imposed by Allah. Allah is Knower, Wise.”¹⁶⁵ Among these groups of recipients, the Quran emphasizes the right of the needy and deprived from the share of wealth from those who own it. The Quran says, “And in their wealth the beggar and the outcast had due share”,¹⁶⁶ and “And in whose wealth there is a right acknowledged. For the beggar and the destitute.”¹⁶⁷ In addition to these, the Quran also outlines a general guidance on how zakat should be distributed to these recipients. The verse that reads, “...pay the due thereof upon the harvest day...”,¹⁶⁸ for instance, indicates that zakat must be paid immediately by those eligible to pay zakat once all of the requirements are fulfilled.

On the role of the state in the management of zakat, the Quran explicitly mentions that there could be a specialized institution responsible for collecting and distributing zakat. The Quran reads, “Out of their wealth take zakat so thou might purify and sanctify them”.¹⁶⁹ The verse, according to al-Ṭabarī, was delivered to the Prophet Muḥammad when he refused to disperse zakat on behalf of his Companions. A hadith narrated by Ibn ‘Abbās tells about Abū Labāba and his friend who approached the Prophet and said, “Oh, the Prophet of Allah! These are our wealth, please distribute zakat from us and seek forgiveness for us.” The Prophet replied, “I was not commanded to take any of your wealth.”¹⁷⁰ Al-Qaraḍāwī maintains that the word “take” in the verse carries the possibility of another party than the owner of the zakatable wealth performing the collection of zakat. The term signifies the state’s role in the administration of zakat for the action was meant for the Prophet who was a leader and representative of the state.

¹⁶⁵ Qur. 9: 60.

¹⁶⁶ Qur. 51: 19.

¹⁶⁷ Qur. 70: 24-5.

¹⁶⁸ Qur. 6: 141.

¹⁶⁹ Qur. 9: 103.

¹⁷⁰ Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī Jāmi‘ al-Bayān ‘an Ta‘wīl Āy al-Qur’ān* (Egypt: Dār al-Ma‘ārif, 1954), v. 14, 454-5.

The delineation of a group of recipients of zakat in the Quran, that is the administrators of zakat (*‘āmilūn*), further confirmed the role of the state. The *‘āmilūn* whose functions include collecting and distributing zakat on behalf of the state signifies the state involvement in the management of zakat.¹⁷¹

These general principles provided by the Quran are further elaborated by the Sunna whose functions are to explain and specify the generality of the Quran. For example, several hadiths provide further description to the words *fuqārā’* and *masākīn* stated in verse 60 of the Sūra al-Tawba mentioned above. The Prophet was reported saying, “If you both wish, I will give you (zakat), but the rich and the strong who earn have no share in it.”¹⁷² In another hadith, Abū Hurayra reported that the Prophet said, “The poor person (*miskīn*) is not the one who asks a morsel or two (of meals) from the others, but the poor is the one who has nothing and is ashamed to beg from others.”¹⁷³

The Sunna also prescribed several methods in distributing zakat which the Quran does not specifically mention. For example, a hadith regarding the necessity to pay zakat in the area where it is collected and the possibility of mobilizing zakat to another area when the collection is in excess. As indicated above, the Quran only gives the command that payment of zakat must be paid to certain recipients without elaborating their residential characteristics. A dialogue between ‘Umar, the second Caliph (581-644 A.D.) and Mu‘adh ibn Jabal, as narrated by ‘Amrū ibn Shu‘ayb, gives the indication that the zakat collected must be disbursed in the area where the collection was made. In the hadith, it is narrated that Mu‘adh has brought back a third of zakat collected in Yemen to Medina where ‘Umar resided. He is reprimanded by ‘Umar for taking away the alms from the designated people in Yemen. The hadith indicates that a transfer of zakat from

¹⁷¹ Al-Qaraḍāwī, *Fiqh al-Zakā*, 747.

¹⁷² Al-Shāfi‘ī, *al-Umm*, v. 3, 182.

¹⁷³ Muḥammad ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ Abī ‘Abdallāh al-Bukhārī*, (Mecca: Maktabat al-Nahḍat al-Ḥadīthah, 1984), v. 1, Book of Zakat, hadith no. 1476, 105; al-Naysābūrī, *Ṣaḥīḥ Muslim*, 421; al-Sijistānī, *Sunan Abī Dāwūd*, hadith no.1627, 428.

the area of its collection to another place is allowed when Mu'adh replies that he brought the zakat back to Medina because there was no recipient left in Yemen that asked for the bequest.¹⁷⁴

It is believed that by the year 9 H., the zakat laws of the Prophet must have assumed their final shape which provides systematic and practical laws for the payment and distribution of zakat at that time.¹⁷⁵

During the period following the demise of the Prophet, given the proximity of the Companions' environment to that of the Prophet's, the rulings on zakat remained much the same except for several new rulings. Most of the rulings concerned the payment of zakat, such as war on those eligible owners of zakatable wealth who refused to pay zakat, the introduction of new types of zakatable wealth, postponement of collection due to drought and the treatment of debt in calculating payment of zakat. Abū Bakr, the first Caliph (reigning from 632-634 A.D.), for example, declared war against those refusing to pay zakat even though during the Prophet's time no such action was taken against those who repudiated. While 'Umar during his leadership (634-644 A.D.) enforced zakat on items which were not zakated earlier like the horses, lentils, peas and olives apart from the existing zakatable items like camels, cows, lambs, wheat, barley, dates and grapes. According to Siddiqi, only one new ruling related to zakat distribution was known during the three first caliphs: the payment of zakat to non-Muslim recipients by virtue of their being *miskīn*.¹⁷⁶

Following the expansion of the territorial domain of Islam, the extensive influx of non-Arabs into Islamic territories and the establishment of the caliphate system, these realities changed greatly. Many new issues emerged which need legal judgement and

¹⁷⁴ Al-Qāsim ibn Sallām Abū 'Ubayd, *Kitāb al-Amwāl* (Cairo: Dār al-Kutub al-Miṣriyya, 1934), v. 4, 596, 600.

¹⁷⁵ Mohammad Akhtar Saeed Siddiqi, *Early Development of Zakat Law and Ijtihad* (Karachi: Islamic Research Academy, 1983), 44-53; al-Qaraḍāwī, *Fiqh al-Zakā*, v. 1, 58-71.

¹⁷⁶ Siddiqi, *Early Development of Zakat Law and Ijtihad*, 85-105.

decision.¹⁷⁷ In the context of zakat distribution, among the new emerging issues were the establishment of the tax collection system whereby the zakat collector became well-paid employees of the state, and the spread of Islam which made the reference to those whose heart are reconciled obsolete among some jurists.¹⁷⁸

As a result of this need, further rules of laws were devised by the jurists. The introduction of multiple methods of deductions like literal and implied interpretations of the text of the Quran and the Sunna¹⁷⁹, logical reasoning like *qiyās*¹⁸⁰, and *istiṣlāḥ*,¹⁸¹ has managed to introduce new rulings on the payment and distribution of zakat. An exemplary case is the usage of *qiyās* in the context of zakat distribution. *Qiyās* is used to apply *masāfat al-qaṣr* which is the boundary used by the Mālikīs and Ḥanbalīs to decide

¹⁷⁷ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 4.

¹⁷⁸ Yaacov Lev, *Charity, Endowments and Charitable Institutions in Medieval Islam* (Florida: University Press of Florida, 2005), 8.

¹⁷⁹ A literal interpretation of the text refers to an interpretation based on the immediate meaning of the text. It represents the principal theme and purpose of the text especially in cases where the text may convey more than one meaning. An implied interpretation refers to the interpretation of the text based on the spirit and rationale of the legal text. There are many different shades of meanings in between that the text of the Quran and Sunna are capable of imparting. See Kamali, *Principles of Islamic Jurisprudence*, 124-38. An exemplary case is a disagreement among the jurists caused by their interpretation of the verse of Quran that outlined the eight groups of recipients. The discussion regarding this will follow.

¹⁸⁰ *Qiyās* is an analogical deduction method of inference in Islamic law. Technically, according to Kamali, *qiyās* is "...the extension of a Shari'ca value from an original case (*aṣl*), to a new case, because the latter has the same effective cause as the former. The original case is regulated by a given text, and *qiyās* seeks to extend the same textual ruling to the new case". See Kamali, *Principles of Islamic Jurisprudence*, 197.

¹⁸¹ *Istiṣlāḥ* can be defined as a consideration which is harmonious with the objectives of the Islamic laws. Its validity was derived from the norm that the basic purpose of an Islamic legislation is to secure the welfare of the people. See Kamali, *Principles of Islamic Jurisprudence*, 267-75. An example where this method of deduction is applied is when Mālik based on jurisprudential interests (*maṣāliḥ*) refuse the payment of zakat to the *mu'allafat qulūbuhum* due to the strength of Islam during his time. See Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, trans. Imran Ahsan Khan Nyazee in *Ibn Rushd: The Distinguished Jurist's Primer. A Translation of Bidayat-al-Mujtahid* (Reading: Garnet Publishing Limited, 1994), 320.

the possibility of shortening a prayer, in determining the boundary for the area where zakat should be paid or disbursed to the recipients.¹⁸²

The rulings made during this period are not only more appropriate to their times and surroundings but also give more clarity to the guidance provided by the Quran and the Sunna. As an example, in elucidating the above hadith regarding a strong person who is capable of earning his own income, the Shāfi'īs and the Ḥanbalīs jurists maintained that a strong person referred to here is a person capable of working at a job whose income is adequate not only for his food intake but also his other basic needs like home, clothing, etc.¹⁸³

Still the discussions on zakat among the classical jurists were mainly centred on how to ensure that the observation to pay zakat was rightly accomplished,¹⁸⁴ for zakat was still considered to be an obligatory worship in Islam. Their rulings and discussions on zakat evidenced this as they were mainly concerned with the issues which would determine a legally successful payment and distribution of zakat. The issues as found in many prominent books of *fiqh* in all of the four main Sunni schools of laws are basically related to the determination of those eligible to pay zakat, the zakatable wealth and its rates, the recipients and non-recipients of zakat and the appropriate methods of payment and distribution. All of these issues are to ensure that zakat will be successfully transferred to the rightful recipients.

Their rulings regarding the distribution of zakat in general covered two aspects of distribution; the recipients that are entitled to zakat and the methods by which zakat should be distributed. The characteristics of each group are discussed in details and the

¹⁸² See Shams al-Dīn ibn Qudāma al-Maqdisī, *al-Sharḥ al-Kabīr 'Alā Matn al-Muqna'* (Beirut: Dār al-Kitāb al-ʿArabī, 1972), v. 2, 679; al-Bahūtī, *Kashshāf al-Qinā'*, v. 2, 263.

¹⁸³ Ibn Qudāma, *al-Mughnī*, v. 2, 523; al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 228.

¹⁸⁴ Monzer Kahf, "The Performance of the Institution of Zakah in Theory and Practice" (paper presented at the International Conference on Islamic Economics Towards the 21st Century, Kuala Lumpur, 26 - 30 Apr. 1999).

amount of zakat for each of the groups and for each of its members are decided.¹⁸⁵ There are also discussions regarding the locality of the recipients whether zakat should be distributed to those residing where the zakatable wealth prospers or where the owner is.¹⁸⁶ In determining the rightful recipients of zakat also, the rulings also cover those who are considered as the non-recipients of zakat.¹⁸⁷

The rulings regarding the methods of distribution on the other hand include the time and speed of distribution, and whether the payment should be made in kind as stated in the hadith or can be substituted by an equivalent value. Zakat in general, according to the majority of jurists, must be disbursed immediately when the obligation is due on the owner, and its ownership must be transferred fully to the recipients. Only in certain circumstances can payment of zakat be delayed.¹⁸⁸ The classical jurists also discussed the right and responsibilities of an owner of zakat who paid directly to the recipients, as well as of the state when zakat is paid to them instead. For an example, according to the Hanbalis, a person is encouraged to pay zakat directly to the recipient when he is confident that the payment shall be received by a deserving recipient regardless of whether the zakatable wealth for which he is paying zakat is an apparent or non-apparent wealth.¹⁸⁹ Apart from these, the discussion on all of these rulings also includes the consequences of violating all the above rulings and the necessary action that must be taken by those responsible. If zakat is paid unintentionally to a non-

¹⁸⁵ Al-Sarakhsī, *al-Mabsūṭ*, v. 2, 8-10, 13-4; Ibn Qudama, *al-Mughnī*, v. 2, 529-30; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 169-193; al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 138-9.

¹⁸⁶ Al-Sarakhsī, *al-Mabsūṭ*, v. 2, 18-9; Ibn Qudama, *al-Mughnī*, v. 2, 531-3; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 193-6; al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 141.

¹⁸⁷ Al-Sarakhsī, *al-Mabsūṭ*, v. 2, 11-2; Ibn Qudama, *al-Mughnī*, v. 2, 517-26; al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 138-9.

¹⁸⁸ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 306-7; al-Ramī, *Nihāyat al-Muḥtāj*, v. 3, 135; al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 255; Ibn Qudāma, *al-Mughnī*, v. 2, 541-2.

¹⁸⁹ Ibn Qudāma, *al-Mughnī*, v. 2, 507-8; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 675. Apparent wealth according to al-Qaradāwī is wealth that other than owner may also know about and may enumerate it. It comprises of yield of agriculture from seeds and fruits, animal from camel, cattle and goats. Non-apparent wealth is money and whatever under its term, and tradable goods. See al-Qaradāwī, *Fiqh al-Zakā*, 758, 765.

recipient of zakat, for example, the payment according to the Malikīs is considered void and the owner has to repay the wrongful amount.¹⁹⁰

On the whole, the classical jurists were in agreement on matters that were already clearly outlined by the Quran and the Sunna. They unanimously agreed that those who are eligible are obliged to pay zakat based on the verses of the Quran that say, “And be steadfast in prayer; give zakat, and bow down your heads with those who bow down in worship”,¹⁹¹ and “Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear nor shall they grieve”.¹⁹² They were also in agreement about the exclusivity of the eight groups of recipients mentioned in the Quran¹⁹³ as sole recipients of zakat.¹⁹⁴ Similarly, they also concurred about the necessity to pay zakat immediately once the owners of zakatable wealth become eligible payers and the permissibility to pay indirectly to the state or its representatives.

On matters where the Quran and the Sunna provided only general guidelines, however, most often the jurists had different views given the difference in their methods of deduction and inferences of the Quran and hadith and their readiness to employ reasoning.¹⁹⁵ An exemplary case of disagreement between the classical jurists was regarding the amount of zakat that should be allocated to each of the outlined groups of recipients. The Quran for this matter had only specifically mentioned the eight groups of recipients of zakat and was silent on whether the disbursement should

¹⁹⁰ Al-Azharī, *Jawāhir al-Iklīl*, v. 1, 141.

¹⁹¹ Qur. 2: 43.

¹⁹² Qur. 2: 227; al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 295-6; al-Sarakhsī, *al-Mabsūṭ*, v. 1, 149; Ibn Qudāma, *al-Mughnī*, v. 2, 433-4.

¹⁹³ Qur. 9: 60.

¹⁹⁴ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 689; al-Sarakhsī, *al-Mabsūṭ*, v. 2, 8; al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 165.

¹⁹⁵ See Christopher Melchert, “Traditionist-Jurisprudents and the Framing of Islamic Law”, *Islamic Law and Society*, 8: 3 (2001), 383-406, for the differences in the level of reasoning adopted by different jurists.

be dealt equally among the groups or should be according to the level of needs of each group. According to al-Shāfiʿī and his followers, zakat should be disbursed equally among the eight groups for they literally interpreted the Quranic verse to mean that all of the groups should receive an equal amount of zakat.¹⁹⁶ Mālik and Abū Ḥanīfa, on the other hand, claimed that the verse should be comprehended through its implicit meanings which is the elimination of want. This resulted in the allowance to place emphasis on the needy among the groups compared to others.¹⁹⁷ Thus, according to them, if the poor need more zakat compared to other groups, then the amount of zakat allocated to them could be more than that given to other groups.

On zakat investment, during this juristic period there was no specific ruling or discussion made about it at all, though there were instances which indicate that investment of zakat has taken place throughout Islamic history and go as far back as the Prophet's time. An example of this is a narration from Anas that a group of people from ʿUrayna arrived in Medina in weak conditions because of a sickness. The Prophet invited them to drink from the camels paid as zakat.¹⁹⁸ The hadith shows that zakat can be given to the recipients of zakat (in this case the *ibn al-sabīl*) not only in its asset form but also its benefits or usufructs forms (in this case the camel's milk).¹⁹⁹ Rearing the camels for their benefits or, in other words, withholding the assets from consumption is a kind of investment in the sense that the assets are utilized to produce future benefits.²⁰⁰ Even though one may argue that the camels were not intended for

¹⁹⁶ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 192; Sulaymān ibn Muḥammad al-Bujayrimī, *al-Bujayrimī ʿAlā al-Khaṭīb* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1996), v. 3, 89.

¹⁹⁷ Sahnūn, *al-Mudawwana*, v. 1, 342; Ibn Rushd, *Bidāyat al-Mujtahid*, 319-21.

¹⁹⁸ Al-Naysābūrī, *Ṣaḥīḥ Muslim*, v. 3, Book on Oath (*Qasama*), 94; al-Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, v. 1, The Book of Zakat (24), hadith no. 1501, 465.

¹⁹⁹ Al-Qisṭilānī commenting on this hadith maintained that beneficial ownership is not only limited to the camel's milk. He also pointed out that the ruler may choose the recipients who may receive the usufructs only instead of full ownerships based on their needs. Al-Qisṭilānī, *Irshād al-Sārī ilā Sharḥ Ṣaḥīḥ al-Bukhārī*, v. 3, 83.

²⁰⁰ Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 55-6.

investment but merely awaiting distribution, the hadith undoubtedly implies that investment utilizing zakat assets could still be undertaken while the zakat assets await the time for their distribution.²⁰¹

It was also narrated that the Prophet, when asked by Qubayṣa for zakat to repay the amount of money that he had spent to settle a dispute, said, “Asking for zakat is not allowed except for three persons. A person who lent his money to settle a dispute ..., a person who is in need and can be given zakat till he is enriched ...”.²⁰² Al-Nawawī in reference to this hadith, made this comment, “... the word *qiwām* and *sidād* in the hadith refer to one meaning that is, whatever that makes someone rich or fulfil his needs”.²⁰³ The hadith among the Shāfiʿīs became the foundation in allowing the payment of zakat not only to fulfil the recipients’ consumption needs but also in providing them with tools or assets that enable them to participate in the economy and earn their own living. Thus this type of zakat investment, whereby zakat is used to buy tools and machinery which can assist the recipients earning a better income has been recognized since the early period of Islam and has been accepted as a *modus operandi* in the distribution of zakat by the classical jurists especially by the Shāfiʿīs.

Aside from this allowance, it has also been accepted by the classical jurists that the recipients of zakat as complete owners of zakat have the right to utilize the zakat that they received as they wished.²⁰⁴ Thus, zakat investment by the recipients is made possible by disbursing an amount of zakat that exceed the recipients’ consumption needs or by the provision of facilities and tools for the recipients to work with, and this has always been allowed by the classical jurists.

²⁰¹ Al-Fawzān, *Istithmār Amwāl al-Zakat wa Mā fi Ḥukmiḥā*, 118-21.

²⁰² The Arabic word used to describe enriching the recipient in the hadith is ‘*qiwāman min ‘aysh*’ or ‘*sidādan min ‘aysh*’. See al-Naysābūrī, *Ṣaḥīḥ Muslim*, v. 2, Book of Zakat, 423.

²⁰³ Al-Nawawī, *Sharḥ al-Imām al-Nawawī ‘Alā Ṣaḥīḥ al-Imām al-Muslim*, v. 4, 432-3.

²⁰⁴ Al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 282. A more detailed discussion regarding this will follow in Chapter 5.

Still among the classical jurists, the investment of zakat is not recognized or highlighted as a distinct subject or treated as a standalone issue of *fiqh* even though the discussions on the methods of zakat distribution at that time were very extensive. The most likely reason for this may be that the main focus of the discussion during this period was on the ways to ensure that the obligation to pay zakat was properly performed as required by the Islamic law, for zakat was mostly considered as an act of worship only. Even though some classical texts referred to zakat outwardly as a financial obligation (*ḥaqq māliyy*), this was nothing more than an explanation of the financial responsibility of the eligible payers of zakat upon the rightful recipients.²⁰⁵

The reason behind the rigidity of Islamic law during this period was the departure of the jurists from the involvement with the maintenance of public order. Matters relating to public law, or criminal, administrative and constitutional law were left to the courts and their Qadis.²⁰⁶ After the introduction of political illegitimacy and the violation of Islamic laws by the rulers, the rulers and the jurists were known to be in frictions with each other.²⁰⁷ The jurists, for fear of association with the vicious rulers and the fear of execution, avoided the echelons of power and distanced themselves from the rulers. The jurists chose to confine themselves primarily to Islamic teachings in the mosque and *madrassa*, which consequently over time cut them off from the practical realities of the state which needed new *ijtihads*.²⁰⁸ Their emphasis became more focused on matters

²⁰⁵ Al-Sarakhsī for example, in describing al-Shāfiʿī's view regarding the obligation to pay zakat, stated that, "... and his argument is that it is a *ḥaqq māliyy*..." See al-Sarakhsī, *al-Mabsūṭ*, v. 2, 174.

²⁰⁶ J.N.D. Anderson, *Islamic Law in the Modern World* (New York: New York University Press, 1959), 20.

²⁰⁷ David Bonderman, "Modernization and Changing Perceptions of Islamic Law", *Harvard Law Review*, 81: 6 (Apr. 1968), 1175-6; Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie (Kuala Lumpur: Islamic Book Trust, 2000), 221-6, 222.

²⁰⁸ George Makdisi, "The Significance of the Schools of Law in Islamic Religious History", *International Journal of Middle East Studies*, 10: 1 (Feb., 1979), 7-8; M. Umer Chapra, *The Future of Economics: An Islamic Perspective* (Leicester: The Islamic Foundation, 2000), 217-24; Ozay

relating to worship and personal matters like marriages.²⁰⁹ They were thus left with less opportunity and need for rational analysis and fresh contributions towards the administration of the state. The association of zakat as an investment method for societal development and rehabilitation might have escaped their concern, thus the need to look at the legality of investing zakat might never have occurred to them.

Zakat at this time also was not a major source of public funds. Public revenues from sources other than zakat were numerous and more than adequate to meet the claims of the people. The revenues came through successive conquests made by the rulers and multiple taxes imposed on citizens.²¹⁰ During the first four caliphs, the population of the Arab peninsula, in particular the capital city of Medina, was small compared to the large inflows of conquests made. As a result of this, the state became less dependent on public borrowings or voluntary contributions like zakat which was further less relied on due to the plenty restrictions surrounding its utilization. There were even instances which indicated that there were no recipients of zakat due to the economic wellbeing of the population, like in the period of ʿUmar al-Khaṭṭāb where large amounts of zakat was transferred from Yemen where zakat was in excess.²¹¹ In the preceding era, especially during the Umayyad and early Abbasid periods, the Islamic state overall was engaged in internal security and stability which contributed towards a general economic growth. Even though the demand for public revenue increased due to lack of

Mehmet, *Islamic Identity and Development. Studies on Islamic Periphery* (London: Routledge, 1990), 62-3.

²⁰⁹ Al-Fanjārī, al-Madhhab al-Iqtisād fī al-Islām, 77.

²¹⁰ According to Metin, the tax base of Ottoman Empire included personal trade and production taxes and the budget included tributes from vassal states, profits from government owned enterprises and revebues from various fees and fines. Cosgel M. Metin, "Efficiency and Continuity in Public Finance: the Ottoman System of Taxation", *International Journal of Middle East Studies*, 37 (2005), 571. See also S.A. Siddiqi, *Public Finance in Islam* (Lahore: SH Muhammad Ashraf, 1962), 200, 208, 217-30.

²¹¹ Monzer Kahf, "The Early Public Revenues System: Lessons and Implications", 16-23, http://monzer.kahf.com/books/english/early_public_revenues_system.pdf (accessed on 17 Nov. 2009).

jizya contributed by fewer new conversions, it still did not depend much on voluntary contributions given the abundant revenue from other taxes.²¹² In later years of the history of the Islamic civilization, with the breakdown of caliphate rule and the division of the community into several regional political entities due to wars and frictions, the role of the state seems to have changed. Even though zakat was certainly still collected, it was more or less organised on a local level by the local imam.²¹³

All in all, even though zakat investment as a standalone issue of *fiqh* cannot be found during the time of the Prophet and the classical jurists, the principles of the distribution of zakat which were developed during this period that relates to the investment of zakat are abundant. These principles will later on become the guidelines referred to by the modern scholars in determining whether investment of zakat is allowed according to the Islamic laws.²¹⁴

3.2 Zakat Investment in the Modern Period

3.2.1 The Advent of Zakat Investment in the Modern Period

The idea of investing zakat not only through disbursement of working tools to the recipients of zakat among the poor but as a more extensive development method appeared as early as the late 1930s, much triggered by the development of Islamic economics in the early part of the twentieth century. In the 1930s and 1940s, as a result of the Great Depression, the Soviet Revolution, as well as the two world wars which saw the weakening of European powers over the Muslim countries, many studies

²¹² Kahf, *The Early Public Revenues System: Lessons and Implications*, 25-7.

²¹³ Holger Weiss, "Zakat and the Question of Social Welfare: An Introductory Essay on Islamic Economics and Its Implications for Social Welfare", in *Social Welfare in Muslim Societies in Africa*, ed. Holger Weiss (Stockholm: Nordiska Afrikainstitutet, 2002), 8.

²¹⁴ According to Weiss, "... with its strong emphasis on social justice and public responsibility for social welfare, Islamic jurisprudence does present a model of a pre-modern Islamic social welfare policy". See Weiss, "Zakat and the Question of Social Welfare", 17.

emerged to restore Islamic authority in the domain where many Muslims were increasingly falling under Western influences.²¹⁵

At first, studies especially by Muslims educated in Islamic studies came forward to disassociate Islam from socialist and capitalist beliefs by outlining the system prescribed by the Islamic teachings for Muslims in conducting their economic life.²¹⁶ Most expositions began with the elaboration and augmentation of various Islamic teachings pertaining to economics, drawn from the injunctions of the Quran and hadith. These studies then compared and contrasted this corpus of religious norms and economic teachings with the fundamental tenets of capitalism and socialism to discern an independent existence which came to be known as Islamic economics.²¹⁷ Among the feature of interest of Islamic economics was a vision of zakat as an integral part of the socioeconomic system of an ideal Islamic state which was an alternative to both capitalism and socialism. Zakat was regarded as an important obligatory taxation tool that could equalise distribution of wealth between the rich and the poor and maximise social welfare, which the laissez-faire system lacks.²¹⁸

²¹⁵ Timur Kuran, "Islamic Economics and the Islamic Sub-Economy", *The Journal of Economic Perspective*, 9: 4 (1995), 156.

²¹⁶ According to Wilson, the attempt to associate or dissociate Islam with socialism and capitalism was abandoned only in the 1970s. Rodney Wilson, "Islam and Economic Development" (<http://www.financeinislam.com/article/36/1/103>, accessed 12 Jan. 2010). An earlier version of this paper was presented to the British Society for Middle Eastern Studies (BRISMES) Conference at Lancaster University in July 1982.

²¹⁷ Muhammad Nejatullah Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature* (Leicester: The Islamic Foundation, 1981), 1; Thomas Phillips, "The Idea of Islamic Economics", *Die Welt des Islams*, New Series, 30: 1/4 (1990), 117-20. Kuran asserted that the term 'Islamic economics' was popularized by the writings of Sayyid Abul A'la Maududi in the 1940s. See Kuran, "Islamic Economics and the Islamic Sub-Economy", 156.

²¹⁸ Among those who suggested such idea was M. Hamidullah in his article titled, "Islam's Solution of the Basic Economic Problems", in *Studies in Islamic Economics*, ed. Mohamed Taher (New Delhi: Anmol Publications Pvt Ltd, 1997), 52-7. The article was first published in *Islamic Culture* in April 1936. He was born in Hyderabad, India and received his doctorate in International law from Bonn University, Germany in 1932. He was also well known for his translation of the Quran into French, and has written hundreds of works on Islamic sciences,

The independence of many Muslim countries in the 1950s moved forward the idea of a distinct Islamic economic system and many works on Islamic economics outlining the practical Islamic ways of managing the economies of the new Muslim countries started to appear. This was a part of their larger ambition to reorganize their economies and rebuild their societies according to the tenets of Islam.²¹⁹ The impact of Islamic revivalism experienced by Muslim societies created non-subtle and equally important changes in Muslim attitudes towards the economic and social livelihood of man.²²⁰ The call was to revive the glory of Islam through the enlightenment of Islam and application of Islamic law in all spheres of life, be it in society, politics and economics. The application of Islamic laws was suggested to adapt the current changing modern world without forsaking the principles of Islamic teachings. By the 1960s, conferences specializing in Islamic economics had become yearly, if not more frequent, events

history, and culture. See also Shaikh Mahmud Ahmad, *Economics of Islam (A Comparative Study)*, 3rd ed. (Lahore: Sh. Muhammad Ashraf, 1958), 89-93, 134-5. The work was first published in 1947. Ahmad was born in Kashmir and educated at the University of Aligarh, Pakistan. He has a distinguished career as an educationist and wrote many works on Islamic economics among which are *Social Justice in Islam* (1969), *Towards Interest-Free Banking* (1989), and *Man and Money: Towards an Alternative Basis of Credit* (2002). See also S. Abul A'la Maududi (1903 - 79), *Economic Problem of Man and Its Islamic Solution* (Lahore: Islamic Publications Ltd., n.d.), 38-40. The book was his lecture delivered in the Muslim University, Aligarh, on 20 October 1941. He was a Sunni Pakistani journalist, theologian and the founder of Jamaat-e-Islami, an Islamic revivalist party in Pakistan.

²¹⁹ Muhammad Nejatullah Siddiqi, *Some Aspects of the Islamic Economy*, (Lahore: Islamic Publications Ltd, 1970), 1. The idea mostly concentrated in the Middle East and Indo-Pakistan region but also permeated Southeast Asia, where studies promulgating the importance of zakat not only for the individuals involved but also towards society's benefits can be found. For an example, Ash Shiddieqy maintained that zakat is not meant for distribution to individuals only but more towards society's benefits. He argued that this was evidenced by the allowance to elect *‘amilūn* to collect zakat and the recipients of zakat which range from those who are poor to those who are in need like the *ibn al-sabīl* and *fī sabīl li Allā*. If it was meant for individuals' sake, then payment of zakat by the owner only will by itself fulfil the purpose. T. M. Hasbi Ash Shiddieqy, (1906-), *Pedoman Zakat*, 2nd ed. (Djakarta: Bulan Bintang, 1967), 213-4. He was a professor at the Fakultas Syariah, IAIN Sunan Kalijaga Yogyakarta, Indonesia. The first edition was published in 1953.

²²⁰ Siddiqi, *Muslim Economic Thinking. A Survey of Contemporary Literature*, 1-2.

among Muslims scholars and states.²²¹ During this period, zakat in fact becomes the other most hailed distinction of the Islamic economics besides an interest free economics.²²²

At the beginning, zakat was merely treated as a fund whereby the wealth of the affluent was transferred to the poor. Later on, as scholars became more circumspect in their analysis and discussion on the workings of an Islamic state and society, various methods and approaches in realizing zakat as a source of Muslim development was introduced. Among the earliest works found, suggesting in more detail how zakat should be utilized as a source of investment for the socio-economic development of Muslims was a paper and a report presented at the First Regional Conference of Muslims from South East Asia and the Far East held in Kuala Lumpur on 31 January to 6 February 1964. Jamil, in his paper titled "A Socio-Economic Power for the Development and Progress of the Muslim Community", insisted that zakat as an important socio-economic factor to the Muslim community should be applied for productive purposes and not only spent as individual minimal financial assistance. He also suggested that the best method to capitalise on zakat is by utilizing it as a source to develop Muslim human capital, since the possible recipients are groups of individuals

²²¹ For an extensive list of early works and conferences in Islamic economics see Siddiqi, *Muslim Economic Thinking*, 83-125 and al-Fanjarī, *al-Madhab al-Iqtisādī fī al-Islām*, 77-90. Al-Fanjarī stated that there were three approaches of the early education of Islamic economics. First were the works or discussions focusing on certain topics of Islamic economics like on *ribā*, zakat, ownership, social security in Islam, etc. These partial discussions on Islamic economics were common features of conferences and post-graduate theses during this period. Second was where the works dealt with a more comprehensive approach in educating Islamic economics like studies on social justice in Islam, politics and economics in Islam, etc. The third approach was through the historical exposition of previous Islamic economic system as found in the historical administration of Islamic states. From these historical experiences, the works showed that Islamic economics has existed throughout the Islamic history. Most of this kind of works was on the economic system during the reign of ʿUmar ibn al-Khaṭṭāb, and the economic thoughts of Ibn Taymiyya and Ibn Khaldūn.

²²² Hamidullah, M., "Islam's Solution of the Basic Economic Problems", 52-74.

that form part of the community.²²³ The report submitted by the Commission on Social and Economic Problems at the same conference also echoed Jamil's thought. An excerpt of the report reads,

“...it was felt that it would be better to use the proceeds of the zakat for the poor and the needy in providing means for them to obtain skill and experience and the necessary implements and tools to enable them to earn a living for themselves, rather than to pay them money as doles ... and to improve the education of the Muslims by the building of schools and colleges and the provision of scholarships.”²²⁴

The idea of financing investment projects with zakat that benefits its recipients was also espoused by al-Qaraḍāwī. This was exemplified by the ideas in his renowned and influential book, *Fiqh al-Zakāh Dirāsāt Muqārana li Ahkāmihī wa Filsafātihi fī Ḍaw'i al-Qur'ān wa al-Sunna*, published in 1969. He quoted al-Ramlī, a prominent Shāfi'ī scholar who allowed sufficient provisions for the poor which enabled them to earn their own maintenance (*naḥqā*). Al-Qaraḍāwī provided an example of capital investment by which returns could cover their needs, provided that the ownership of the property was transferred to them and can be bequeathed to their heirs. Based on these examples, al-Qaraḍāwī further argued that the state should be allowed to establish manufacturing firms, buildings and business organizations funded with zakat and which can be owned partly or wholly by the poor.²²⁵ His arguments, which were based on the injunctions found in the Quran and Sunna and exemplified by practices and adaptations by previous Muslim scholars, provided juristic legitimacy and rationality in utilizing zakat for the advancement of Muslim economic development. Given the

²²³ Jamil Mohamad, “A Socio-Economic Power for the Development and Progress of the Muslim Community” (paper presented at the First Regional Conference of Muslims from South East Asia and the Far East, Kuala Lumpur, 31 Jan. – 6 Feb. 1964), 71-2. Jamil was a Malaysian representative at the conference.

²²⁴ “Report of the Commission on Social and Economic Problems”, (presented at the First Regional Conference of Muslims from South East Asia and the Far East, Kuala Lumpur, 31 Jan. – 6 Feb. 1964).

²²⁵ Al-Qaraḍāwī, *Fiqh al-Zakāh*, v. 2, 567. He, however, did not elaborate whether it should be owned individually or collectively by the poor.

frequency of references in later works on zakat to this monumental book and his active role in the Ikhwān al-Muslimīn (Muslim Brotherhood) of Egypt which was influential in invoking the Islamic revivalism throughout the Muslim world, it can be safely assumed that al-Qaradāwī's view may further impel the thoughts on zakat investment as an agenda of Islamic state building.²²⁶

The idea to utilize zakat as a source of financing for Muslim development gained momentum in the 1970s and 1980s. Muslim economists, given their new independent states and a surge in their countries' wealth, became more engrossed and focused in finding the tools which could achieve the claimed efficiency of the Islamic economics. The changing conditions in some Muslim countries caused by vast oil price increments, especially in the Middle-East, had increased zakat resources compared to before thus providing a new type of public wealth for Muslim development.²²⁷

In the 1970s, the development of Islamic economic theories reached its height as the development of Muslims' thoughts on economics showed a healthy transition from expositions on 'Islamic economic teachings' to a systematic articulation of 'Islamic economics'.²²⁸ More studies appeared on Islamic economics by Muslims with mainstream economic backgrounds and who adopted the flair of western economic methodology. The studies also became more coherent syntheses of economics and

²²⁶ The book has been the reference of many if not all studies on zakat. It is acclaimed by many works on zakat as a major source of classical zakat laws which is presented according to a specific methodology and given a fresh look at the issues relating to zakat in the modern times. Abu al-Ala al-Mawdudi described the book as "the book of this century in Islamic jurisprudence", as cited in Ana Belén Soage, "Shaykh Yusuf al-Qaradawi: Potrait of a Leading Islamic Cleric", *Middle East Review of International Affairs*, 12: 1 (March, 2008), 51-8. Weiss described the book as, 'The most popular modern manual on Islamic economics'. See Holger Weiss, "Reorganising Social Welfare among Muslims: Islamic Voluntarism and Other Forms of Communal Support in Northern Ghana", *Journal of Religion in Africa*, 32: 1 (Feb., 2002), 86.

²²⁷ See Charles Tripps, *Islam and the Moral Economy. The Challenges of Capitalism* (Cambridge: Cambridge University Press, 2006), 103-13.

²²⁸ The conclusion was made by Khurshid Ahmad in his foreword to Siddiqi's *Muslim Economic Thinking: A Survey of Contemporary Literature*, v.

Islamic ethics.²²⁹ Detailed discussions on the potential of zakat and its implementation also become eminent, and large number of Muslim scholars became convinced that zakat could become the main source of an Islamic state's revenue collection.²³⁰ Zakat is believed and shown to produce economic justice, provide a social security system, eliminate poverty and beggary, rehabilitate the poor to self-sufficiency, and increase the total wealth and well-being of the larger society.²³¹ On zakat investment, various studies emerged discussing its benefits to Muslims' development and suggesting various methods to implement it. Among these studies are those by Faridi, who proposed using the zakat fund to create fixed receivables income to the poor, especially in times when the collection of zakat dwindles,²³² and El-Din, who suggested that investment of zakat not be limited to capital goods but should be diversified to include equity shares to accommodate different recipients' needs also.²³³

²²⁹ Mehmet, *Islamic Identity and Development*, 84.

²³⁰ Among the studies which employed modern scientific approach to examine the role of zakat in Muslims' economic development are Munawar Iqbal, "Zakah, Moderation and Aggregate Consumption in an Islamic Economy", *Journal of Research in Islamic Economics*, 3: 1 (1985), 45; Abu N.M. Wahid, "The Economic Implications of Zakah", *Contemporary Review*, 248: 1440 (1986), 10-13; Ahmad Fuad Darwish and Mahmud Siddiq Zain, "Effects of Zakah on Aggregate Consumption Function in an Islamic Economy", *Journal of Research in Islamic Economics*, 2: 1 (1984), 52-9.

²³¹ See Kahf, "The Performance of the Institution of Zakah in Theory and Practice"; Faridi, "A Theory of Fiscal Policy in an Islamic State", 29-30; Mannan, "Effects of Zakah Assessment and Collection on the Redistribution of Income in Contemporary Muslim Countries", Fuad A. al-Omar, "Management of Zakah Through Semi-Government Institutions" and S. Ismail Shehatah, "Limitations on the Use of Zakah Funds in Financing the Socioeconomic Infrastructure of Society" (papers presented at the International Seminar on the Management of Zakah in a Modern Muslim Society, Karachi, 22 Apr. – 2 May 1985).

²³² F.R. Faridi, "Zakat and Fiscal Policy in Studies", in *Studies in Islamic Economics*, ed. Khurshid Ahmad (Jeddah: International Centre for Research in Islamic Economics, 1980), 119-27.

²³³ Tag el-Din, "Allocative and Stabilizing Functions of Zakah in an Islamic Economy."

3.2.2 Resolutions and *Fatwās* on Zakat Investment

Simultaneously, as the idea of investing zakat became a subject of interest among the Muslim economists, issues of their legality from the *Sharī'a* perspective became a cause of concern given the sanctity of zakat as an obliged act of worship. Multiple forums and discussions were held and attended by renowned Muslim scholars to discuss the issues. As an outcome of these discussions, several resolutions or *fatwās* regarding them were issued in the middle and late 1980s and in the 1990s.

The first formal discussion from the juristic and collective view on zakat investment as a potential mechanism to assist and develop Muslim communities was organized by the Council of Zakat in Riyadh in July 1986.²³⁴ Following the discussion, the Board of the Islamic Fiqh Academy in its 3rd convention held in Amman, Jordan in October 1986, when asked about the investment of zakat on projects with yield but without granting individual ownership to the recipients, issued a resolution that reads as follows,

“Utilizing the zakat fund for investment on projects as a principle is permitted, provided that the ownership of the fund is eventually transferred to the designated recipients, or to be put under the authority of a religious committee that is responsible for the collection and disbursement of zakat. The investment, however, may only be conducted after fulfilling any immediate and urgent need of the recipients and due diligent care has been taken to avoid loss”.²³⁵

During the same year, the Board of Fatawa of the Ministry of Awqaf of Kuwait issued a *fatwā* that allowed investment of zakat, the profits of which could provide continuous funds to sponsor the teachings of Islam in Africa. The *fatwā* reads,

“For zakat, the general obligation is to pay to the recipients immediately after obligation. However, the payment is allowed to be delayed when there is an inability to fulfil the need or for the purpose of distributing it

²³⁴ The discussion was attended by prominent Muslim jurists from various countries. See Mu'tamar Majma' al-Fiqh al-Islāmī, *Majallat Majma' al-Fiqh*, v. 3, part 1, 363-7.

²³⁵ Resolution No. (3) d 3/07/86, in Mu'tamar Majma' al-Fiqh al-Islāmī, *Majalla Majma' al-Fiqh*, v. 3, part 1, 421.

according to a fixed timetable that ensures a continuous fulfilment of the recipients' needs like in an investment. The investment however must be in the fields which allow its liquidation in time of need, for instance deposits in Islamic banks. If there is an allocation above the amount needed, investment on projects is allowed with the stipulations that the investment is on projects allowed by the *Shari'ah* and the profits must be spent on the recipients only. For the zakat invested on fixed assets, it must be treated according to the principles of zakat. When there is a need to dispose the assets in the future, the asset can be sold but the value must be channelled back to the recipients only. The sale can only be executed when the need is very urgent only."²³⁶

A similar *fatwā* was issued by The Shari'ah Committee of the Bayt al-Zakat of Kuwait also in 1986, when asked regarding the investment of some of the zakat fund in developing manufacturing factories outside of Kuwait which profits will be channelled to fund the Islamic activities there. The *fatwā* reads,

"Investment of zakat in developing manufacturing factories whereby the profits are spent on Islamic activities is allowed as long as the activities are Islamic and are meant for the recipients. The assets of the manufacturing factories also must remain part of the zakat fund and if disposed, its value must be given back to the recipients only."²³⁷

In 1989, the Board of Fatawa and Shari'ah Supervision for Bayt al-Tamwīl al-Kuwayfi issued a *fatwā* that allowed investment of zakat collected for the International Islamic Charitable Organization of Kuwait (al-Hay'ah al-Khayriyya al-Islāmiyya al-Ālamiyya). The *fatwā* reads,

"The welfare of the poor and the state of the finance requires that this wealth is invested in a diligent and secure manner to avoid loss, so that

²³⁶ *Fatwā* no. 1/28/86 in Lajnat al-Fatwā, Ministry of Al-Awqāf and Al-Shu'ūn al-Islāmiyya of Kuwait, *Majmū'at al-Fatāwā al-Shar'iyya* (1985-1986) (Kuwait: Ministry of Al-Awqāf and Al-Shu'ūn al-Islāmiyya of Kuwait, n.d.), v. 3, 68.

²³⁷ Fatwa of the Shari'ah Committee of Bayt al-Zakat of Kuwait, concluded in its 30th Meeting 1986. Bayt al-Zakā, *Abḥath wa A'māl al-Nadwa al-Thālitha li Qaḍāyā al-Zakāt al-Mu'āṣira*, 323.

nobody will have to bear its burden. To have a guarantee against the loss would be more prudent.”²³⁸

A more recent *fatwā* was issued by Majmaʿ al-Fiqh al-Islāmī in 1998. The *fatwā* reads,²³⁹

“Payment of zakat must be conducted immediately and this can be accomplished by transferring the zakat ownership to the existing recipients of zakat at the time of obligation. The recipients must be those determined by Allah in the Quran, which reads, “The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer; a duty imposed by Allah. Allah is Knower, Wise”. Thus investment of zakat for the sake of one group of recipients like the poor is not permitted. The reasons are the violation of various religious principles among which are the failure to pay zakat immediately, failure to transfer the zakat ownership to the recipients of zakat at the time of obligation and the burden on them (from not getting the zakat instantly).”

From all of the above *fatwās*, it is noted that the majority of modern jurists favour zakat investment, though some restrictions are imposed. The restrictions include:

- a. to undertake the investment in a diligent and secure manner;
- b. to only undertake investment activities that conform with Islamic law;
- c. to immediately liquidate the investment when the zakat is needed by the recipients;
- d. to eventually transfer all the invested assets to the recipients; and
- e. to provide guarantee against loss.

²³⁸ Muḥammad Farah, *Al-Tawjīh al-Istithmārī li al-Zakā*, 42; See Bayt al-Tamwīl al-Kuwayfī, *al-Fatāwā al-Sharʿiyya fī al-Masāʾil al-Iqtisādiyya* (Kuwait: al-Ramz li al-Khidmāt al-ʿIlāniyya, n.d.), 309.

²³⁹ The *fatwā* was issued by the institution during its 15th meeting held in Mecca on 31 October 1998. See www.themwl.org/Publications/default.asp (accessed on 10 Feb. 2009).

The restrictions were imposed due to the concerns raised by Muslim jurists regarding several principles of zakat distribution that will be violated if an investment of zakat is undertaken liberally for, ultimately, zakat is a ritual that an owner of zakatable wealth is obliged to observe. The principles also serve to protect it from misuse and ensure that the rights of the recipients are not breached.

The main concerns of the jurists are the violations of the requirements that zakat must be disbursed immediately to the recipients and a full execution of the transfer of zakat ownership from the owner of zakat to the recipients. ʿUlwān in this regards maintains that investment of zakat will delay its distribution to the recipients since the profits will take some times to materialize. Thus, according to him, zakat investment is not allowed because it is against the view of the majority of jurists which insists that zakat must be disbursed immediately.²⁴⁰ On lack of a full transfer, Abdullah ibn Bayh argues that giving the money to other organizations to invest would mean that the obligation is not accomplished yet since the payment of zakat will only be accountable once the fund is received by the recipients.²⁴¹

Other concerns raised by scholars include the violation of trust between the owner and the ruler. The ruler, as a medium between the owner of zakatable wealth and the recipients, is entrusted to disburse the payment on behalf of the owner to the recipients. Withholding zakat through investment is regarded as a breach of this trust as the actual disbursement might not take place due to the impossibility to transfer the ownership or to losses borne. There is also the possibility that investment of zakat might forsake the

²⁴⁰ ʿAbdullāh Nāṣiḥ ʿUlwān, *Aḥkām al Zakāʿ alā Dawʿi al-Madhāhib al-Arbaʿa*, 97. Similar concern was also expressed by ʿAbdallāh ʿAlī Ādam. See Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, v. 3, part 1, 354.

²⁴¹ Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, v. 3, part 1, 416.

immediate need of the recipients or that the benefits of the investment are not channelled properly to the recipients or even to non-recipients.²⁴²

As a whole, however, most of these jurists are willing to accept the possibility of investing zakat if it is undertaken under specific environments where the issues which may affect the sanctity of zakat are resolved or certain specific measures are taken to avoid or minimize them.²⁴³

3.2.3 Conclusion

The above discussions reveal that, in the 1970s and 1980s, the idea to utilize zakat as a source of financing for Muslim development started to gain momentum. Muslim scholars became engrossed in discussing the potential of zakat and its implementation in improving the economic development of Muslim countries. Among the suggestions was to invest zakat to finance long-term Muslim economic development.

As various forms of investment were suggested by Muslim economists and fuelled by increasing zakat revenue in some Muslim countries, the issue of investing zakat from the Islamic law perspective became a concern. In the mid-1980s and onwards, multiple *fatwās* were issued concerning the implementation of zakat investment.

In the proceeding part of this chapter, the study shows how the evolution of thoughts on zakat as a potential source of development and later on investment of zakat as a mechanism to advance Muslim economic development in the long-term influenced the evolution of zakat investment in Malaysia.

²⁴² See comments made by Ādam, ʿAbdallāh ʿAlī in Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, v. 3, part 1, 354.

²⁴³ The issues concerning zakat investment which are highlighted by the Muslim scholars will be discussed thoroughly in Chapter 5 and 6.

3.3 The Genesis and Development of Zakat Investment in Malaysia

This part examines the genesis and development of zakat investment in Malaysia. It starts with an investigation of the administration of zakat in the pre-independence period before looking at the period where the ideas of utilizing zakat to assist Muslim economic development started to prosper. Next, it examines the factors that make possible the undertakings of zakat investment. These include the initiatives taken to increase the collection of zakat and improve the efficiency of the zakat institutions and the Islamic law enactments and the *fatwās* that encourage and allow investment of zakat.

3.3.1 Zakat Investment in the Pre-Independence Period

It was believed that Islam's first contact with the Malay states took place as early as the fifth century, although only in the thirteenth century did Islam start to take hold of the population through mass conversion as it penetrated the Malay courts.²⁴⁴ By then, the sultanates which ruled the Malay states were considered to be Islamic states, and the sultans, being the rulers of this autocratic system, were also acknowledged as the heads of the religion. Records showed that the regulations on the compulsion of zakat have existed among the Malay sultanates since the 16th century. Among the earliest known was that of the Pahang Laws enforced by Sultan Abdul Ghafur Muhaiddin Shah (1525-1568) and the Kedah law of 1667 both of which imposed the collection of zakat on rice (paddy).²⁴⁵

²⁴⁴ Gordon P. Means, "The Role of Islam in the Political Development of Malaysia", *Comparative Politics*, 1: 2 (Jan., 1969), 266.

²⁴⁵ For more laws on the compulsion of zakat in the Malay sultanates, see Azhar Mohd Nasir, "Development of Secular and Religious Taxation in Peninsular Malaysia" (PhD thesis, University of Edinburgh, 1999), 176-9.

Even though Islam was the main religion of the sultanates, in terms of day to day administration, Muslim religious institutions were not actually centralized or actively supported by royal power and revenues. The religious affairs of the Muslim community were primarily managed by the local religious institutions. The elected head for religious administration was the local imam for the village mosque or *surau*. For the collection and distribution of zakat, they were the ones who collected zakat from the local community and determined to whom zakat should be disbursed.²⁴⁶

Zakat during this period was collected from paddy which was the main staple of the Malays.²⁴⁷ Given the peasant life of the Malays, their dependency on subsistence agriculture and the collection of zakat which was made within small local communities, it can be safely assumed that zakat during this time must have been minimal. At state level, the prevalent economic sources of the rulers in the Malay sultanates was secular taxation on production and trade as well as services exacted from slaves, bondsmen and *kerah* levies,²⁴⁸ which further implies that zakat was not recognized or considered as a significant public source.

On the methods of zakat distribution or the underlying purposes of the distribution not much was recorded and known. Most often, zakat was disbursed to local recipients according to the imam's discretion. The recipients, besides the poor, also included the religious administrator like the imam, *siak* and *khatib*²⁴⁹ signifying that zakat was not

²⁴⁶ Abdul Majeed Mohamed Mackeen, *Contemporary Islamic Legal Organization in Malaya*, Monograph Series no. 13 (Connecticut: Yale University Southeast Asia Studies, 1969), 3, 27-9; Means, "The Role of Islam in the Political Development of Malaysia", 269-71; William R. Roff "The Origins and Early Years of the Majlis Ugama", in *Kelantan - Religion, Society and Politics in a Malay State*, ed. by William R. Roff (Kuala Lumpur: Oxford University Press, 1974) 104-6.

²⁴⁷ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 177.

²⁴⁸ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 35-6. *Kerah* is a Malay term referred to works done as an obligation towards the rulers and without any compensation.

²⁴⁹ An imam is a person who leads the congregation in prayers. A *siak* is a person in charge of looking after a mosque or *surau* (smaller place of worship than a mosque). A *khatib* is a

confined to those in poverty only. There were also indications that zakat was employed to maintain religious institutions like the mosques, *suraus* and religious schools (*pondok*).²⁵⁰ It is worth noting that the school of law that prevailed among the Malays since the inception of Islam was that of the Shāfi'īs.²⁵¹ As noted above, according to the Shāfi'īs, payment of zakat could also be made in tools or assets that assist a *faqīr* or *miskīn* in generating an income. This might suggest that there was a possibility that this kind of zakat investment might have been practised during this period.

A more centralized and structured organization of zakat only appeared during the British occupation (1786-1957), in particular when the Malay rulers were deprived of their legislative and political powers.²⁵² To a certain extent, to conciliate the Malay rulers who had to forsake their states' administration and to maintain the facade of the inherited pre-eminence of the local aristocracies and traditional rulers of the sultanates, as well as take care not to upset the local people's beliefs and customs, the rulers were given the authority to oversee matters relating to religion and custom. As a result, more efforts were spent by both the aristocracies and the British on establishing a more systematic Islamic administration. The earliest initiative was the Majlis Ugama Islam dan Adat Isti'adat Melayu (Council of Islamic Religion and Malay Custom) of Kelantan established in December 1915.²⁵³ The council was formed as an autonomous entity, theoretically separate from the state government where it was given the legal authority to counsel and assist the Kelantan's ruler that is the sultan, on all matters relating to the Islamic religion and Malay customs. The council was accorded the power to develop

person in charge of delivering Friday sermons but most often the sermons are also delivered by the imam.

²⁵⁰ Roff, "The Origins and Early Years of the Majlis Ugama", 104-7.

²⁵¹ Mackeen, Contemporary Islamic Legal Organization in Malaya, 14-6, 50-1.

²⁵² The start of this deprivation was the Pangkor Treaty of 1874 signed between the British and the Sultan of Perak signed on 20 January 1874. The treaty is significant in the history of the Malay states as it is the precedent of a legitimized British control of the Malay rulers and paved the way for British imperialism in Malaya

²⁵³ Roff, "The Origins and Early Years of the Majlis Ugama", 101-2, 106-40.

and implement policies and laws relating to the practice and performance of the Muslim religion confined only by the final permission of the ruler.²⁵⁴

From the start, a specialized department was designated to handle the collection and distribution of zakat as it was the main source of funds for the Majlis Ugama Islam dan Adat Isti'adat Melayu Kelantan. The functions of the Department of Zakat and Fitrah at the council included providing general administration of zakat collection, maintaining Muslim cemeteries, engaging in business and trade, building rented properties and providing miscellaneous industries.²⁵⁵

Other states also followed in establishing their own Islamic councils (these will be referred to henceforth as Majlis Agama Islam Negeri (State Islamic Religious Council or MAIN)).²⁵⁶ Among the first was Pahang in 1922, Perlis in 1930, Johore in 1934 and Kedah in 1936. By 1957, all states in the Peninsular Malaysia to a certain extent had centralized their collection and distribution of zakat where the power to collect and disburse zakat in general was vested on the MAIN in each state and administratively managed by the respective state's Jabatan Ugama Islam (Department of Islamic Religion).²⁵⁷ Still, during this period, the collection and distribution of zakat were

²⁵⁴ See Roff, "The Origin and Early Years of the Majlis Ugama", 101-3. Abu Talib Ahmad, "Writing Malaysia's Social History from the Ecclesiastical Records", in *New Terrains in Southeast Asian History*, ed. Abu Talib Ahmad and Tan Liok Ee (Ohio: Ohio University Press, 2003), 259.

²⁵⁵ Abdullah Alwi Hassan, *The Administration of Islamic Law in Kelantan* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1996), 111.

²⁵⁶ By 1962 all states in the Peninsular Malaysia have established their own MAIN. The council during this time was normally referred to as Majlis Ugama. For consistency, the study will refer to the council as Majlis Agama Islam Negeri (MAIN) throughout the study.

²⁵⁷ Ahmad Ibrahim, *Islāmic Law in Malaysia* (Singapore: Malaysian Sociological Research Institute Ltd., 1965), 336. Ibrahim stated that the earliest state to commence collection and distribution of zakat was Trengganu. However, no date was given. See also Mujaini Tarimin, *Zakat Pertanian – Sistem dan Perlaksanaannya* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1990), 53-4.

mainly conducted by local religious individuals who collected zakat from their areas and transferred part of it to the MAIN and kept the rest for local distributions.²⁵⁸

Starting from 1952, comprehensive state enactments which provided the machinery for the Islamic law administration (mostly known as the Administration of Muslim Law Enactments at that time) were established.²⁵⁹ Under these enactments, the MAIN was established as a corporate entity which conferred it with a juristic personality. As a corporate entity, the MAIN is able to have perpetual succession, conduct corporate activities like acquiring, holding and disposing properties, acting as executors of trusts, etc. In these enactments also, it was clearly stated that the MAINs were the sole authority in collecting and distributing zakat in their respective states.²⁶⁰

From the commencement of these MAINs, zakat has become the main source of its revenue.²⁶¹ This has made the MAINs reliant on the collected zakat. Zakat was not only distributed to the recipients of zakat but also spent for the remuneration of the *‘āmilūn* and other officers working under the MAINs. Zakat was also utilized to develop religious institutions like mosques and Islamic schools and to sponsor studies in Islamic teachings especially in the Middle East. Apart from these expenditures, there was also evidence that surpluses of zakat after disbursement were invested in the banking system, generating profitable returns for the MAINs.²⁶²

²⁵⁸ Roff, *The Origins and Early Years*, 104-5; Raymond Firth, *Malay Fishermen, Their Peasant Economy* (New York: The Norton Library, 1975), 290. Firth was an economic anthropologist. This book was an outcome of his study on the fishermen in Kelantan in 1939-1940.

²⁵⁹ Mackeen, *Contemporary Islamic Legal Organization in Malaya*, 31.

²⁶⁰ Mackeen, *Contemporary Islamic Legal Organization in Malaya*, 39-41.

²⁶¹ Roff, *The Origins of the Malay Nationalism*, 71-4; Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 186, 226; Pejabat Ugama Islam dan Adat Melayu Perak, "Penyata Kutipan Zakat, Fitrah, Baitulmal dan Kawalan Wakaf-wakaf Bagi Masa Setahun Berakhir pada 31 Haribulan Disember 1957 Bersamaan dengan 8 Haribulan Jamadil Akhir 1377H".

²⁶² Abdullah Alwi, *The Administration of Islamic Law in Kelantan*, 106-16; Azhar, "Development of Secular and Religious Taxation in Malaysia", 186, 196, 207-10.

All in all, during the period of intervention, zakat was mainly treated as an obligatory worship of Muslims and concerned the payment between the affluent and the poor. Even though this period saw the institutionalization of zakat at state level under the administration of the MAINs, given its newly formative years and the minimal amount of zakat collected, the full potential of zakat as a source of Muslim development was yet to be tapped. Investment activities involving zakat were limited to the dissemination of Islamic teachings and investment of surpluses of zakat collection at the banking institutions only. The importance of zakat as an investment vehicle for Muslim development, as will be shown later, remained unrecognized until the late 1950s.

3.3.2 The Formative Period

The idea of zakat as a source of Muslim development started to appear in Malaya in the late 1950s in consonance with the growth of Islamic economic thought in the Middle East and Indo-Pakistan region at that time.²⁶³

In 1955, the first Islamic party in the country, Pan Malayan Islamic Party (Parti Islam Se-Malaysia or PAS) was established. From its inception the party has been actively promulgating and articulating the ideas of an Islamic state where Islamic laws and economics prevail, besides promoting Malay Islamic identity where Islam must be protected against infidel influences. All these became a powerful theme used to

²⁶³ In the early of the twentieth century, improved communications, and contacts with the Middle East and Indo-Pakistan especially through pilgrimages gradually brought about significant changes in the Malays outlook upon their religious institutions. Reformist thoughts like those of Muhammad Abduh and Rashid Ridha which urged the purification and reestablishment of Islam infiltrated local religious schools (*madrassa*) especially through published works used in these schools and later influenced the Malay society. See Roff, *The Origins of Malay Nationalism*, 75-6, 88.

mobilize mass Malay support and to give the party religious legitimacy.²⁶⁴ Such ideas of an Islamic state and the mechanics of its implementation must have permeated thoughts on zakat as new ideas in utilizing zakat as a significant fund for Muslims' economic development started to be discussed among local scholars together with the issues in the administration of zakat which would impede its operations.

One of the earliest local works found proposing this idea was *Falsafah Rukun Islam, Bertali kepada Politik - Ekonomi – Sosial* (*The Philosophy of the Fundamentals of Islam, in Relations to Politics – Economics – Social*) by Budiman Radhi, published in 1958. He questioned the teachings of zakat which focused on its legal and devotional aspects only and suggested that studies should be conducted to know the extent of zakat contribution to the country and how Muslims could participate in them. According to Budiman, zakat was not only meant as a source to develop social development but also to restructure and strengthen the state's economy. Zakat distribution should not be given as food, drink and clothing only but spent also for education and training to enable the recipients to work besides educating Muslims with Islamic teachings.²⁶⁵

In 1964, at the First Regional Conference of Muslims from South East Asia and the Far East, Jamil, a Malaysian representative at the conference, raised a concern about the inconsistency of collection between the states in Malaysia and the concentration of collection on small and relatively poor rice (paddy) farmers only. Given the progressing zakat collection, even under the circumstances, he argued that with appropriate

²⁶⁴ Mohd Noor Nawawi, "Gerakan Islam di Malaysia" (paper presented at the Seminar Gerakan Islam di Dunia Melayu, Petaling Jaya, Malaysia, 6 Dec. 1986), 11; Means, "The Role of Islam in the Political Development of Malaysia", 278.

²⁶⁵ Budiman Radhi, *Falsafah Rukun Islam, Bertali kepada Politik - Ekonomi – Sosial* (Kota Bharu: Pustaka Dian Press, 1958), 67, 76-80. He was a teacher at the Ma'had al-Ihyā' al-Sharīf, in Gunong Semanggol, Perak. He also authored a few other books in Islam including *Senjata Budiman, Islam dan Revolusi* and *Muhammad Revolusiner Islam*.

machinery and organization zakat collection could be increased and become a great resource for economic and social development of the Muslim communities.²⁶⁶

In the same year, at the Conference of the Malaysian Religious Teachers and Students, it was pointed out that the amount of zakat collection in each state at that time was insufficient to render any significant effect on Muslim economic development. The conference found that management of zakat by the zakat institutions was inefficient and the administration of zakat throughout the states was inconsistent from one to another. The conference reached a resolution that the issues could be tackled with the establishment of a secretariat to study and formulate a centralized corporate collection and disbursement agency at the federal level. A central zakat agency was deemed as the necessary solution to increase the low collection of zakat by tackling the inefficiencies faced by the zakat administrations at the MAINs, in particular those caused by lack of enforcement on zakat defaulters.²⁶⁷

The idea of utilizing zakat as a source of Muslim economic development came to a crest when it became the main objective of the 1st Persidangan Alim Ulama Malaysia held in Kuala Lumpur in February 1968. In principle it was agreed by the congress that zakat should be invested to maximize its economic returns for Muslims' economic advancement.²⁶⁸ Some forms of zakat investment at that time were actually already

²⁶⁶ Jamil, "A Socio-Economic Power for the Development and Progress of the Muslim Community", 71-7.

²⁶⁷ "Persidangan Alim Ulama Kita", Editor's column, *Berita Harian*, 2 Dec. 1968, as cited in Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 264-5.

²⁶⁸ There were five working papers which directly discussed this idea at the congress, namely; "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri" (Standardizing the Regulations in Collecting Zakat Fitrah in all States), by Othman Abdullah. "Penggunaan Harta Wakaf dan Wang Zakat bagi Pembangunan Ekonomi Orang-orang Islam" (Utilizing Waqf and Zakat for Muslims' Economic Development), by Enche' Omar Osman. "Hukum Memindahkan Pungutan Zakat dari Satu Tempat ke Tempat Lain" (The Ruling on Transferring Zakat Collection from a Place to Another), by Abdul Jalil Hassan. "Penggunaan Wang Baitul-mal" (Utilization of Baitulmal's Resources), by Arshad Masjini.

undertaken by the MAINs. Surpluses of collection²⁶⁹ were already invested in banking accounts which generated interest income and in acquisition of real properties which generated rents for the MAINs.

Table 3.1 Capital Investments Financed with Surpluses of Zakat at the MAINs²⁷⁰

States	Types of Investment	Amount M\$
Perak	Fixed Deposit	160,000
	Current Account & Assets	101,945
Penang	Savings Account	200,000
Melaka		130,000
Johore	Surplus	300,000
Pahang	Savings Account	80,000
Negeri Sembilan	Rents from homes	16,000 annually
Selangor	Rents from land & houses	12,000 annually
Kelantan	Yields from buildings	53,000 annually

Zakat has also been spent for the dissemination of Islam and Muslims' educational advancement through scholarships and the development of religious education institutions.²⁷¹ The congress, however, found that the scope and method of investment

"Mengadakan Tabong Kumpulan Wang Zakat Peringkat Persekutuan (Pusat) dan Chara-chara Menggunakan Wang Itu" (Establishing a Central Zakat Fund and Ways to Manage the Fund). Enche' Ishak Tadin.

All the presenters were in agreement that zakat was a necessary source for Muslim economic development and stability. Zakat investment was suggested as a mechanism to achieve this idea. See Persidangan Alim Ulama Malaysia, held in Kuala Lumpur, in 1968.

²⁶⁹ The reason for the occurrence of excesses of zakat was not clear at this juncture and perhaps was due to the time needed to find better recipients or even the inefficiencies of the MAINs in distributing zakat, thus delaying the distribution and creating a surplus in its account. However, a fact that cannot be ignored is that zakat was the MAINs' main source of revenue and the surpluses in a way enabled the MAINs to acquire and expand its assets.

²⁷⁰ The table was taken from Othman, "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri". No date was given for the table.

²⁷¹ For example, Pejabat Ugama Islam dan Adat Melayu Perak spent M\$125,493.62 in 1957 for *fi sabīl li Allāh* group from the total of M\$285,951.41 zakat distributed to the recipients. The expenditures for this group included financing for the development and maintenance of

undertaken was very limited and ineffective to attain the purpose of Muslim development, given the low amount of zakat collection and the inefficiency of the zakat administrators.²⁷² The congress suggested a wider scope of investment comprising not only investment of surpluses of zakat and for the dissemination of Islam but also projects which directly promoted the recipients' economic wellbeing. These included, for instance, investment in establishing and maintaining training and rehabilitation centres, and residential accommodation for students; acquiring lands in urban areas to build homes and shop lots which could be rented out to Muslims at affordable prices; acquiring land for live stock rearing and agricultural farming; providing working tools, fertilizers, seeds and livestock for recipients' entrepreneurship; and establishing venues for recipients' employment like kiosks, shops, and factories.²⁷³

Foreseeing the hurdles of low collection of zakat and the irregularities and inefficiencies of the zakat laws and its administration, the congress again stressed the need for the establishment of a central zakat committee responsible for studying the existing zakat

religious schools and institutions and scholarships for local and overseas students. See Pejabat Ugama Islam dan Adat Melayu Perak, "Penyata Kutipan Zakat, Fitrah, Baitulmal dan Kawalan Wakaf-wakaf Bagi Masa Setahun Berakhir pada 31 Haribulan Disember 1957 Bersamaan dengan 8 Haribulan Jamadil Akhir 1377H".

²⁷² The low collection of zakat was thought to be caused by the lack of payment of zakat and insufficient enforcement on zakat defaulters. The collection of zakat also was found to be mainly contributed by *zakaat al-fiṭr* which was small in amount and zakat on rice, paid by small rice planters. See Enche' Ishak, "Mengadakan Tabong Kumpulan Wang Zakat Peringkat Persekutuan (Pusat) dan Chara-chara Menggunakan Wang Itu", and Othman, "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri". See also Pejabat Ugama Islam dan Adat Melayu Perak, "Penyata Kutipan Zakat, Fitrah, Baitulmal dan Kawalan Wakaf-wakaf Bagi Masa Setahun Berakhir pada 31 Haribulan Disember 1957 Bersamaan dengan 8 Haribulan Jamadil Akhir 1377H".

²⁷³ See Enche' Omar, "Penggunaan Harta Wakaf dan Wang Zakat bagi Pembangunan Ekonomi Orang-orang Islam", Othman, "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri" and Arshad, "Penggunaan Wang Baitul-mal". Numerous articles also appeared in local newspapers and magazines discussing and proposing similar methods of zakat investment. See for examples; "Alim Ulama Tentang Ura2 Menuboahkan Sharikat Kerjasama dengan Wang Zakat, *Berita Harian*, 31 Jan. 1968; "Semua Jenis Zakat Fitrah dan Harta2 Wakaf Boleh Dijadikan Modal untuk Pembangunan Ekonomi Umat Islam", *Merdeka*, vol. II, no. 5, 15 Feb. 1968; "Tithes for Economic Progress", *News Strait Times*, 8 June 1968.

laws in all states and to structure new standardized ones. It also reiterated the necessity to establish a central zakat fund where surpluses of zakat were pooled to form a formidable and centrally managed investment fund.²⁷⁴

In a congress held in 1972, Abdul Ghafar Baba, the Minister of State and Rural Development again suggested the creation of a voluntary fund aimed for Muslims' economic development. The fund according to Baba would be owned by the MAINs and financed by surpluses of zakat and voluntary alms collected by charging 30 cents more than the obliged *zakāt al-fiṭr* on individual Muslims.²⁷⁵

Throughout the 1970s, investment of zakat at the MAINs continued to be primarily in the dissemination of Islam through the development of religious institutions and scholarships for higher level studies in Islamic studies. There was also evidence that showed that surpluses of zakat were invested in the acquisition of financial assets and real properties for rental and development. In the mid-1970s, for example, Majlis Ugama Islam dan Adat Melayu Trengganu (MAIT) invested surpluses from its collection of zakat in shares acquisition, developing residences for rents, acquisition of lands for residential developments and so forth. These investments enabled the MAIT

²⁷⁴ See Othman, "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri" and Enche' Ishak, "Mengadakan Tabong Kumpulan Wang Zakat Peringkat Persekutuan (Pusat) dan Chara-chara Menggunakan Wang Itu". In the successive congress, Muhammad Ghazali, the Mufti of Selangor, suggested that the MAINs establish and manage companies where the shares are owned by the recipients. See Muhammad Ghazali Abdullah, "Pembayaran Zakat dan Cara Perlaksanaan Pembayaran" (paper presented at the Kongres Ekonomi Islam ke-2, Kuala Lumpur, 7 – 9 Apr. 1972).

²⁷⁵ See Abdul Ghafar Baba, "Mempastikan Penyertaan Orang-orang Melayu di Bidang Ekonomi Melalui Kompleks Kewangan dan Permodalan Dengan Modal \$100 juta dalam Masa 10 Tahun". See also Nik Muhd Muhyiddin Musa, "Penubuhan Perbadanan Kewangan Muslimin (Baitul Mal Pusat)". Both papers were presented at the Kongres Ekonomi Islam Ke-2, Kuala Lumpur, 7 - 9 Apr. 1972. Musa at that time was the Headmaster of the Kolej Islam Kelang.

to own, by 1977, 15 plots of land worth M\$444,723.78, 15 houses worth M\$727,900 and a yield of more than M\$100,000 in rent from its real properties.²⁷⁶

3.3.3 Centralized Zakat Authority and the Zakat Fund

Throughout the 1980s and 1990s, the idea of a centralized zakat authority and zakat fund occupied much of the discussions on utilizing zakat for Muslims' development. Several proposals were outlined by scholars, and attempts were made by the government to set up a central zakat fund to pool the states' zakat collection and a central zakat authority to streamline the states' administration of zakat.

As noted above, the idea of a centralized zakat authority was already formed in the early 1960s. From the start, however, it was realized that to establish a central zakat fund was not easy due to the necessity and hassle to acquire each state's permission to change their zakat laws particularly to accommodate mobilization of zakat across the states. Several operational frameworks were proposed by scholars in the coming years to overcome the hurdle.

At the Kongres Kemajuan Islam di Malaysia held in 1966, for example, Persatuan Bekas Pelajar² Melayu Mesir suggested the establishment of a national secretariat for zakat under the auspice of the Majlis Raja-raja Melayu (Conference of Malay Rulers), represented by the religious authority from each states. Among the suggested roles was to standardize the types of zakatable wealth imposed and the methods of distribution

²⁷⁶ Khalid Mohd Zain, "Kearah Pembangunan Ekonomi dan Sosial Umat Islam Terengganu Melalui Zakat, Baitulmal dan Wakaf" (paper presented at the Seminar Pembangunan Islam Terengganu, Kuala Terengganu, 14 -16 Apr. 1977). Khalid at that time was an officer in charge of zakat, *baitulmal* and *waqf* at the Majlis Agama Islam Terengganu.

employed in all states.²⁷⁷ Another two forms of operational framework were suggested in Persidangan Alim Ulama Malaysia held in 1968. Abdullah, a presenter at the conference, proposed the appointment of the Majlis Amanah Rakyat (MARA) as the fund trustee who would gather the capitals from the state religious authorities. The board would be responsible in managing the fund and each of the religious authorities would own a proportionate share of the fund according to their contributions. Tadin, another presenter, on the other hand, suggested the establishment of an agency represented by all of the MAINs' chiefs (Yang Dipertua Majlis), the central bank's governor, and representatives from Bank Bumiputra and MARA. Profits from the investment could be transferred back to the MAINs according to their capital share contributions.²⁷⁸

The idea of a centralized zakat authority was once again manifested in the late 1980s and early 1990s when the government attempted to centralize the collection of zakat through its taxation agency, the Inland Revenue Department (IRD). The moves for its direct participation in the administration of zakat were manifested in its participation at conferences²⁷⁹ on zakat where its effectiveness as a taxation collection mechanism and its active roles together with the MAINs and Department of Religious Affairs in promulgating and introducing zakat on income as well as standardizing the calculation of zakat on business, were highlighted. Further involvement of the IRD in zakat administration was evident when, in 1992, Anwar Ibrahim, the Deputy Prime Minister,

²⁷⁷ See Persatuan Bekas Pelajar2 Melayu Mesir, "Penyatuan Pentadbiran Ugama Islam di Malaysia" (paper presented at Kongres Kemajuan Islam di Malaysia, University of Malaya, Kuala Lumpur, 6 - 7 Aug. 1966).

²⁷⁸ See Othman, "Menyamakan Peratoran Memungut Zakat Fitrah di Semua Negeri-negeri" and Enche' Ishak, "Mengadakan Tabong Kumpulan Wang Zakat Peringkat Persekutuan (Pusat) dan Chara-chara Menggunakan Wang Itu" (papers presented at the Persidangan Alim Ulama Malaysia, Kuala Lumpur, 1968).

²⁷⁹ Among the conferences were like Seminar Zakat dan Cukai Pendapatan held in Pulau Pinang in 1988 and Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia held in Kuala Lumpur also in 1988 and Bengkel Agihan dan Penyelarasan Kutipan Zakat Peringkat Kebangsaan held in Kuala Lumpur in 1993.

advocated that in view of IRD's expertise in the collection of taxation across the country, it was given the authority to collect zakat on wealth (except on agriculture) in the country. The collected zakat would be deposited into a special consolidated account at the Central Bank. Distribution of zakat to the states would be on the basis of the number of Muslims in each state.²⁸⁰

In 1991, the Steering Committee on the Development of Islamic Economy established by the Prime Minister's Department and several other federal agencies proposed the establishment of Yayasan Zakat Kebangsaan (National Zakat Foundation). The committee noted the wide disparity between the states' collection of zakat, where a high collection of zakat was made by the states in the west Peninsular Malaysia especially Selangor, Wilayah Persekutuan and Penang. Thus the committee contended that it was pertinent to establish a national foundation that could mobilize zakat from these states to the states with a lower collection of zakat. As a centralized zakat authority, the foundation would be able to organize a centralized database of Muslims thus facilitating collection and distribution of zakat across the country.²⁸¹

The most serious bid to centralize zakat administration was the establishment of a federalized zakat management body known as Lembaga Urusan Zakat Malaysia (Zakat Council of Malaysia) (LUZAM) tabled in the 1993 budget. The council would be represented by each of the MAINs but operated as a federal agency where collection would be administered by the IRD's machinery. The zakat collected would be transferred to an account at the Bank Negara and each council allocated shares and profits according to their capital contributions. From the collection revenue, it was suggested that 30 percent would be disbursed to LUZAM which would coordinate

²⁸⁰ The proposal was presented by the Bank Negara Malaysia on the directive of the Deputy Prime Minister in a report titled "Cadangan Kutipan Zakat Menerusi Jabatan Hasil Dalam Negeri" (presented on 31 August 1992). See Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 292-3.

²⁸¹ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 289-90.

large scale programmes to eradicate poverty among Muslims. The rest would be transferred to the MAINs according to their capital contributions.²⁸² The collection would be generated from a proposed 2.5% zakat imposition on employment income generating an estimate of at least M\$250 million.²⁸³

Another suggestion was made later, in the early 2000s, for the establishment of a central zakat authority known as Majlis Zakat Negara, an agency under the Majlis Raja-raja where the members consisted of representatives from all states' MAINs. To avoid the MAINs' possible loss of control over zakat management or change in the states' enactments, it was suggested that its operations were modelled on that of Majlis Tanah Negara and Majlis Fatwa Kebangsaan.²⁸⁴

Even though many suggestions and attempts were made to realize a central zakat authority and fund, the ideas failed to materialize. There were several reasons for these failures. Foremost was the nature of the Islamic law in the country which made it effective in the state concerned only. The Islamic law that is enacted in a state is only applicable in that particular state. The legal administrative restriction of Islamic law means that any decision regarding the administration of zakat which involved more than one state must get the approval from both states' laws. In a centralized zakat authority, zakat from the states must be transferred to a central fund and vice versa.

²⁸² This proportion applies when the collection revenue is less than M\$100 million. If the revenue is above M\$100 million then the proposed ratio is 50: 50. Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 334-5, 367.

²⁸³ This was an estimate made by the IRD for possible collection of zakat on employment income in 1994. Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 323.

²⁸⁴ PPZ, "Mengapa Perlu Ditubuhkan Majlis Zakat Negara", *Laporan Zakat 2003*, 90-1. Majlis Tanah Negara is a national board chaired by a minister and represented by representatives from the states. The board functions to form policies regarding the development of land in the country and to supervise its usage through consultation with federal and states' representatives. See Sec. 91, Constitution of Malaysia. The idea to establish a central zakat agency under the Majlis Raja-raja is not a new one for it has been already suggested by Persatuan Bekas Pelajar2 Melayu Mesir in Kongres Kemajuan Islam held in 1966. See Persatuan Bekas Pelajar2 Melayu Mesir, "Penyatuan Pentadbiran Ugama Islam di Malaysia".

Approval from each state's Islamic law authority must be sought first before zakat could be mobilized between the states. In other words, to enable the federal government to administer zakat through a centralized authority, it must first pass the hurdle of getting the consent from the rulers of the states to surrender their rights on the administration of zakat.²⁸⁵

The idea of a centralized zakat authority itself was not advantageous to the states' zakat institutions. Transferring the right to administer zakat to another authority means that they would encounter a possible loss of control over the management of their main revenue. The move to make IRD the government arm in handling the central zakat management was abandoned in the early 1990s, not only because it became overwhelmed with its own operational constraints but also due to the reluctance of several MAINs, especially Pusat Pungutan Zakat (PPZ), an incorporated zakat collection institution of the Majlis Agama Islam Wilayah Persekutuan who foresaw its economic losses given an IRD takeover.²⁸⁶ Similarly, lukewarm responses from the MAINs were the reason for the failed establishment of LUZAM as they refused to give away their authority over zakat administration.²⁸⁷ Hamayotsu provided another explanation of the slow improvements made in institutionalizing zakat as a welfare-financial mechanism in the era of Islamization in the 1980s and 1990s. According to him, the reason was the political 'patronage-maximizing' attitude among several UMNO leaders. Anwar Ibrahim, an inspired religious leader and who held an influential post in the government,²⁸⁸ was known to support the centralization of zakat administration. Due to his political stratagem, however, he chose to patronize two other

²⁸⁵ PPZ, "Mengapa Perlu Ditubuhkan Majlis Zakat Negara", *Laporan Zakat 2003*, 90-1; Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 264-8.

²⁸⁶ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 288-98.

²⁸⁷ PPZ, "Mengapa Perlu Ditubuhkan Majlis Zakat Negara", *Laporan Zakat 2003*, 90; Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 295, 322-35.

²⁸⁸ Anwar Ibrahim served as the Malaysian Minister of Finance from 1991-98 and Deputy Prime Minister from 1993-98.

non-governmental welfare agencies, Amanah Ikhtiar Malaysia and Yayasan Pembangunan Ekonomi Islam Malaysia for his public welfare agenda. Internal interest clashes within the UMNO leadership circle also very much influenced his lack of interest concerning the administration of zakat.²⁸⁹

Despite the failures to form a centralized zakat authority, the government has been successful in streamlining some of the zakat administrative laws and policies in the country. Through its department of Islamic religious affair, the Jabatan Kemajuan Islam Malaysia (Department of Islamic Development Malaysia) or JAKIM,²⁹⁰ the government managed to streamline the states' Islamic administrative enactments.²⁹¹ The agency together with the IRD also helped in introducing a standardized calculation of zakat on business which made it possible for the introduction of tax rebate for companies that paid zakat on business in later years.²⁹²

²⁸⁹ According to Hamayotsu, at first there were shortages not only in resources but also technical expertise to develop the developmental programmes and to enforce them appropriately at the zakat institutions. However the lack of expertise was overcome when modern corporate styles of management were introduced and corporate trained personnel were brought in to manage the zakat institutions. See Kikue Hamayotsu, "'Islamization' of the Malaysian State? The Rise of Institutionalized Religion and State-society Relations" (paper presented at APSA Annual Meeting, Boston, USA, 29 Aug. – 1 Sep. 2002).

²⁹⁰ The department was established on 1 Jan. 1997. It is a successor to Majlis Kebangsaan Hal-Ehwal Ugama Islam Malaysia (National Council of Islamic Religious Affairs) created in 1968 at the behest of the Majlis Raja-raja and functions as a national coordinating body of the MAINs. The council later on in 1985 was upgraded into one of the main division under the Prime Minister's Department known as Bahagian Hal Ehwal Islam (*Department of Islamic Religious Affairs*).

²⁹¹ "Proses Seragam Undang-undang Pentadbiran Hampir Siap", *Mingguan Utusan*, 20 Jan. 2008.

²⁹² In 2001, JAKIM published a standardized manual on the calculation of zakat on business which is adapted by most of the MAINs. See Jabatan Kemajuan Islam Malaysia, *Panduan Zakat di Malaysia* (Kuala Lumpur: JAKIM, 2001). Prior to this, the zakat institutions used different approaches to calculating zakat on business.

3.3.4 Expanding the Scope of Zakat and the Shift to Zakat on Wealth

From the beginning, most of the MAINs collected both *zakāt al-māl* (zakat on wealth) and *zakāt al-fiṭr*. Prior to the 1990s, the collection of zakat for most states was primarily from the *zakāt al-fiṭr* and collection from zakat on wealth was small. In Penang, for example, collection from *zakāt al-fiṭr* in 1980 was M\$474,734 compared to M\$96,340 from zakat on wealth. In 1987, collection from *zakāt al-fiṭr* was M\$593,464 compared to M\$278,628 from zakat on wealth.²⁹³ Similar trends also were observed in the state of Wilayah Persekutuan.²⁹⁴

Since the amount of *zakāt al-fiṭr* charged on an individual Muslim was very low and the collection was enforced only once a year in the month of Ramadan, the total amount of zakat collection was found to be insignificant.²⁹⁵ As for the collection on zakat on wealth, most were from zakat on rice which was paid mostly by poor paddy farmers which again resulted in a low yield of zakat collection.²⁹⁶ There were also other zakatable wealth imposed by the MAINs like livestock, commerce and gold, but again the zakat collected from these kinds of wealth was minimal.²⁹⁷

²⁹³ Mohd Yusof Abdul Latiff, "Pengutipan, Penghasilan dan Penggunaan Zakat di Pulau Pinang Masa Kini dan Masa Depan di dalam Konteks Pembangunan Umat Islam" (paper presented at Seminar Zakat dan Cukai Pendapatan, Pulau Pinang, 5 – 6 Nov. 1988).

²⁹⁴ See Table 3.2.

²⁹⁵ The rate varied between states and on average in the 1980s was between M\$2.30-2.50 per individual Muslim. See Aidit Ghazali, "Zakat Administration in Malaysia", in *The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 95-99.

²⁹⁶ See Ismail Muhd Salleh and Rogayah Ngah, "Distribution Of The Zakat Burden On Padi Producers In Malaysia", in *Some Aspects of the Economics of Zakat*, ed. M. Raquibuz Zaman (New York: American Trust Publication, 1980), 80-153.

²⁹⁷ Apart from these reasons, low collection also was associated with high incidences of zakat defaulters. Even though there were regulations that penalized zakat defaulters, enforcement was nominal due to the inadequacy of the zakat laws to empower the zakat administrators to check on a Muslim's wealth and the administrators unwillingness to resort to harsh measures to cajole eligible payers to pay zakat. Furthermore, there was a wide acceptance by the public that payment of zakat can be performed not only through the MAINs but also through other unofficial channels. A detailed study of zakat in the state of Kedah found that the rate of

Noting these, from the early 1980s, the MAINs started to shift their collection to zakat on wealth instead of *zakāt al-fiṭr*, in particular by emphasizing collection on zakat on business which could provide better collection than zakat on paddy and expanding the scope of zakat to new types of wealth that could generate more zakat. The increase in zakat on business (commerce) contributions compared to *zakāt al-fiṭr* in the middle of the 1980s can be seen from the collected zakat in Wilayah Persekutuan in 1975 up till 1985 presented in Table 3.2 below.

Table 3.2 Amount of Zakat Collected by MAIWP According to Types in 1975-1985 (in M\$ million)²⁹⁸

Year	Zakāt al-Fiṭr	Zakat on Wealth	Zakat on Commerce
1975	5.13	0.02	0.06
1980	8.81	5.56	0.94
1981	9.60	6.11	7.93
1982	10.32	18.49	12.27
1983	10.70	23.95	7.58
1984	12.20	9.70	41.75
1985	14.57	30.14	17.81

Note: Zakat on commerce (business) is a kind of zakat on wealth.
Zakat on wealth above refers to a combination of many types of zakat on wealth paid together.

At this juncture, it was found that even though zakat on business was already obliged by the MAINs, participation from companies wholly owned by Muslims in paying the zakat was minimal.²⁹⁹ In the years 1989 to 1991, a campaign to spur the awareness of eligible payers to pay zakat was launched both at state and federal levels and various support was also received from academia, the Malay Business Council (Dewan

observance among the eligible zakat paddy payers between 1977 and 1979 was only 15 percent. See Aidit, "Zakat Administration in Malaysia", 92-9; "Millions of Ringgit in Zakat Go Uncollected", *News Strait Times*, 7 May 1988. For the study in the state of Kedah, see James C. Scott, "Resistance without Protest and without Organization: Peasant Opposition to Islamic Zakat and the Christian Tithe", *Comparative Studies in Society and History*, 29: 3 (1987), 424-9.

²⁹⁸ The table was taken from Aidit, "Zakat Administration in Malaysia", 96.

²⁹⁹ See Aidit, "Zakat Administration in Malaysia", 90-100.

Perniagaan Melayu) and Malay newspapers who conducted seminars and aggressive media coverage particularly concerning the imposition of corporate zakat. Despite all these efforts, the collection of zakat on business was still very disappointing. In 1995, Majlis Agama Islam Selangor (MAIS) reported that only 5% of Muslim businessmen in Selangor paid their zakat on business. Similarly, only about 20% of businessmen in Wilayah Persekutuan were reported by Majlis Agama Islam Wilayah Persekutuan (MAIWP) as paying their corporate zakat.³⁰⁰

The low collection of zakat on business was attributed mostly to the unawareness and reluctance of the businessmen to pay zakat on business. There were also the technical and operational matters related to the collection of this type of zakat. There are multiple assessment methods employed by the MAINs in determining the amount of zakat to be paid on corporate zakat. Companies found it hard and confusing to understand each procedure and standardize them across their subsidiaries in different states. Companies paying corporate zakat also face double taxation, as they were also liable to pay corporate income tax.³⁰¹ The companies most often chose not to pay zakat to avoid investigation by the IRD on suspicion of corporate tax evasion which might also lead to indictment and fines. Apart from these, there were also administrative issues at the MAINs especially relating to the procedures and implementation in assessing zakat on business. The MAINs were short of staff who were experts in modern accounting and management and who were capable of handling the assessment procedures according to Islamic law. Problems also occurred when the MAINs had to conduct extra tasks of producing verification to the IRD for any substantial payment of zakat on business.³⁰²

³⁰⁰ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 288-9, 327-8.

³⁰¹ "Zakat: Baitulmal Cari Penyelesaian -- Ketiadaan Pakar Masalah Utama", *Berita Harian*, 25 Sept. 1985.

³⁰² Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 277-8.

The problem of multiple assessment methods was only solved more than a decade later when the federal government and the MAINs took the initiative to come out with a standardized formula to assess zakat on business.³⁰³ The standardization is important to ease the calculation of zakat, especially for companies that operate in more than one state, and to make possible the deduction of taxation for any zakat on business paid by these companies were it to be implemented later. The agreement to accept a standardized formula to calculate zakat on business among the states was made at the Konvensyen Zakat Kebangsaan held in Putrajaya, Malaysia on 18-19 September 2001.³⁰⁴ Multiple *fatwās* at the national level were also issued regarding the obligation of zakat on business³⁰⁵ in general and also for specific companies like the Lembaga Urusan dan Tabung Haji³⁰⁶ and its subsidiaries,³⁰⁷ co-operatives,³⁰⁸ consultation firms,³⁰⁹ etc.

In the meantime, the MAINs together with the federal government took the initiative to introduce zakat on income which was a new type of zakat popularized mainly by al-Qaraḍāwī. The idea to extend the scope of zakat taxation was prompted as early as the late 1970s, when in a seminar organized by the Pusat Islam of the Prime Minister's Department on May 1977 in a bid to increase the collection of zakat, it was suggested

³⁰³ See Jabatan Kemajuan Islam Malaysia, *Panduan Zakat di Malaysia* for the standardized methods for assessing zakat on business.

³⁰⁴ See "Penyeragaman Kaedah Galak Syarikat Tunaikan Zakat", *Berita Harian*, 20 Sept. 2001; "Kiraan Zakat Lebih Praktikal", *Utusan Malaysia*, 19 Sept. 2001.

³⁰⁵ The *fatwā* was issued at the committee's 31st meeting held on 9 Dec. 1992. See Jabatan Kemajuan Islam Malaysia (JAKIM), *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, (Putajaya: JAKIM, 2009), 62.

³⁰⁶ This is a company which main objective is to manage pilgrimage funds. The *fatwā* was issued at the committee's 17th meeting held on 3 May 1979. See JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 58.

³⁰⁷ The *fatwā* was issued at the committee's 58th meeting held on 29 July 2003. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 69.

³⁰⁸ The *fatwā* was issued at the committee's 60th meeting held on 2 July 1985. See also a *fatwā* issued on 23 Oct. 2003. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 60, 70.

³⁰⁹ The *fatwā* was issued at the committee's 50th meeting held on 10 May 2001. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 67.

that the scope of taxation was extended to more types of zakatable wealth as some states at that time, for example, were found to impose zakat on limited types of wealth only.³¹⁰

In the late 1980s and early 1990s, the government, through its Department of Religious Affairs and its taxation agency, the IRD, and together with the MAINs and the states' Department of Religious Affairs, organized a series of conferences which instigated and discussed the imposition of zakat on income, including its formulation and the establishment of its collection mechanism. The idea was first formally presented to the public in a seminar jointly organized by IRD, Baitulmal Wilayah Persekutuan and Persatuan Ulama Malaysia which was held on 5 May 1986 in Kuala Lumpur.³¹¹ These were followed by several other seminars like Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia³¹² and Seminar Zakat dan Cukai Pendapatan³¹³ both held in

³¹⁰ See resolutions of the "Perjumpaan Pegawai-pegawai Zakat/Baitulmal, Jabatan Ugama Islam Negeri-negeri, 1977/1397", organized jointly by the Majlis Ugama Islam Wilayah Persekutuan and the Prime Minister Department on May 1977, Kuala Lumpur.

³¹¹ See Abd Rashid Dail, "Zakat dan Cukai Pendapatan Mengikut Kacamata Islam" and Mat Saad Hassan, "Zakat dan Cukai Pendapatan di Malaysia" (papers presented at the Seminar Zakat dan cukai Pendapatan di Malaysia, Kuala Lumpur, 5 May 1986). Other conferences were like Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, Kuala Lumpur, 28 - 29 Mar. 1988 and Bengkel Penyelarasan Zakat, Melaka, 20 -22 Aug. 1990. Zakat on income or in Arabic known as *zakat al-māl al-mustafād* according to PPZ is zakat imposed on all types of income or returns in exchange for services provided like salaries, fees, rents, royalties, gifts, allowances, honorariums, compensation, pension, seasonal trading and other types of yield received during lifetime, after retirement or death and whatever kind of income received from a career or for being a professional. See <http://zakat.com.my> (accessed on 27 Nov. 2009).

³¹² The seminar was held on 28 – 29 March 1988 at the Pusat Islam, Kuala Lumpur. It was jointly organized by IRD, the Department of Religious Affairs of the Prime Minister's Department and MAIWP.

³¹³ The seminar was held on 5 – 6 Nov. 1988 at the Universiti Sains Malaysia in Penang. It was organized by the IRD, the Majlis Ugama Islam Pulau Pinang and the Pusat Islam of the Universiti Sains Malaysia.

1988 and Bengkel Penyelarasan Zakat³¹⁴ in 1990. As a result of these efforts, the obligation to pay zakat on income was slowly adopted by the states in the country. In 1992, the National Fatwa Committee issued a decree obliging zakat on income on those eligible, and by the mid-2000s, all states except Perak had issued a similar decree.³¹⁵ Other similar *fatwās* regarding the obligation to pay zakat on income were also issued such as zakat on Employment Provident Fund³¹⁶ and the 2.5% rate obliged on gross annual income.³¹⁷

3.3.5 Incorporation of Zakat Institutions

At the state level, in an effort to increase the efficiency in administering zakat, several MAINs adopted a corporate style of management in dealings with the collection and distribution of zakat. This was executed by incorporating either the zakat collection or both the collection and distribution departments, thus introducing modern corporate management techniques into managing zakat.

The move was initiated by MAIWP who in 1989 undertook a study to look at the possibility of creating a corporate based collection system for collecting zakat and also to encourage payment of zakat on wealth from professionals and companies alike.³¹⁸ After positive feedback from Coopers and Lybrand, a consultancy firm hired to study

³¹⁴ The seminar was held on 20 – 22 Aug. 1990 in Malacca. It was jointly organised by the Department of Religious Affairs of the Prime Minister's Department and Pusat Islam Malaysia.

³¹⁵ The *fatwā* was issued at the committee's 31st meeting held on 9 Dec. 1992. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 62. The first state that issued the *fatwā* that legalizes the imposition of zakat on income was Kedah on 2 Jan. 1986.

³¹⁶ The *fatwā* was issued at the committee's 5th meeting held on 17 Nov. 1982. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan*, 59.

³¹⁷ The *fatwā* was issued at the committee's 56th meeting held on 7 May 2003. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 69.

³¹⁸ See Mohamed Dahan Abdul Latif, "Pendekatan Kepada Cara Pengagihan Dana Zakat Yang Dinamik Sesuai dengan Suasana Semasa", in *Kaedah Pengagihan Dana Zakat: Satu Perspektif Islam*, ed. Nik Mustapha Nik Hassan (Kuala Lumpur: IKIM, 2001), 40.

the proposal viability, MAIWP appointed a working committee in December 1989 to establish a corporate collection company, employing the concept of collective and professional *‘āmilūn* from various educational backgrounds and adopting a new information and technology system. Subsequently, on 20 November 1990, MAIWP established Yayasan Taqwa Wilayah Persekutuan Berhad, a foundation responsible for managing MAIWP’s investment activities.³¹⁹ The foundation, through a proxy company called Harta Suci Sendirian Berhad, created a collection agency named Pusat Pungutan Zakat (PPZ) to collect zakat on behalf of MAIWP.³²⁰ PPZ commenced its operation on 1 January 1991 and, being operated by a corporate company, differed much in its administration from the traditional zakat collection departments. The personnel consists both of those professionally trained in economics, finance, management, information technology and so forth and those educated in Islamic studies. It employs a fully computerized system in creating an up to date database of payers, a web page for immediate and historical information regarding the payment of zakat, online payment and customer service systems. Modern payment channels were introduced besides the typical face to face zakat payment, such as through automatic deduction at source of income, phone-banking, payment by post, cheques, etc.³²¹ In the first three years of its operation, PPZ managed to increase the collection of zakat in Wilayah Persekutuan by more than 2.36 times and increased the number of zakat payers by more than 2.07 times. See Table 3.3 below.

Table 3.3 Collection of Zakat in Wilayah Persekutuan in 1990-1993.³²²

³¹⁹ PPZ, Laporan Zakat 2001, 69.

³²⁰ Azhar, “Development of Secular and Religious Taxation in Peninsular Malaysia”, 302-3. Harta Suci Sendirian Berhad was established on 17 November 1989 and manages both Yayasan Taqwa Wilayah Persekutuan Berhad and PPZ.

³²¹ PPZ, Laporan Zakat 2001, 8; 19.

³²² PPZ, Laporan Zakat 2001, 25-6.

Year	Amount of Collection		Number of Payers	
	RM million	% Change	RM million	% Change
1990	7.6	-	7,660	-
1991	13.5	77.6	11,816	54.3
1992	20.0	48.1	20,098	70.1
1993	25.6	28.0	23,558	17.2

Note: The amount collected above did not include *zakāt al-fiṭr*

The increase in collection of zakat has enabled MAIWP to expand its investment activities further. Since the 1980s, MAIWP has invested zakat in a variety of economic activities through its corporate construction arm, Baitulmal Wilayah Sendirian Berhad. The company has been active in building properties which were let out to poor entrepreneurs whilst at the same time securing continuous rental revenue to the zakat fund. MAIWP was also involved in food manufacturing through another of its subsidiaries, the Baitulmal Kancil.³²³ With an increase in the collection of zakat, in the 1990s MAIWP expanded its investment activities to include Kolej Kejururawatan Pusrawi³²⁴ and Institut Profesional Baitulmal Sendirian Berhad.³²⁵ More courses were also able to be offered to poor Muslim students at Institut Kemahiran Baitulmal, an education institute established in 1989 with the aim to provide free training for the *fuqarāʾ*, *masākīn* and *muʿallafat qulūbuhum* when a four storey building for the institute was completed in 1994.³²⁶

The good track record of its collection performance may have encouraged other states to also incorporate either their zakat collection unit³²⁷ or both their collection and

³²³ Azhar, “Development of Secular and Religious Taxation in Peninsular Malaysia”, 277.

³²⁴ A private nursing college established in April 1994 and managed by Pusat Rawatan Islam Sdn Bhd. (PUSRAWI). The company was owned (99.6% in 2007) by MAIWP and currently is known as Hospital PUSRAWI Sdn. Bhd.

³²⁵ It was established on 23 April 1992 and aims at providing the opportunities to Muslims student to study professional courses like accounting and management.

³²⁶ See http://www.ikb.edu.my/portal/viewpage.php?page_id=10 (accessed January 2, 2010).

³²⁷ The states that incorporated their zakat collection departments are Wilayah Persekutuan (1991), Pahang (1996), Negeri Sembilan (1998) and Melaka (2001).

distribution units³²⁸. Over the years, these incorporated zakat institutions have shown significant increments in the amount of zakat collection, particularly in the states of Selangor and Pulau Pinang, which to a certain extent enable them to increase the types and the amount of their zakat investment.³²⁹

The incorporation enabled the institution to focus solely on zakat administration, as in the case of Lembaga Zakat Selangor (LZS), a subsidiary of MAIS established in 1994 to manage both the collection and distribution of zakat in Selangor. With the autonomy accessed through the incorporation, the institution has the ability not only to generate more collection of zakat but also to expand its scope of investment of zakat and to provide multiple support and control facilities for its implementation.³³⁰

3.3.6 Other Initiatives that Influenced the Increase in Zakat Collection

Other measures taken by the government to boost zakat collection included tax deduction for payment of zakat and deduction of zakat payment at the source of income. The first deduction of zakat from income tax was introduced pursuant to section 14(1)(g) of the Income Tax Ordinance, 1947 which stated that payment of any obligatory zakat made under the written law would be treated as a deduction from aggregate income in ascertaining the income of taxpayers. The ordinance, however, was very much ineffective until the late 1960s since some of the Malay states were yet to form the administrative enactment to regulate and control zakat.³³¹ A better treatment of zakat payment materialized in 1978 when the government introduced a rebate system where zakat and other compulsory religious dues were treated as rebate against

³²⁸ The states that incorporated both their collection and distribution units are Penang and Selangor, both in 1994.

³²⁹ See Appendix A for the amount of zakat collection at the incorporated zakat institutions and its percentage growth from 1991-2007.

³³⁰ The forms of zakat investment undertaken by LZS and the facilities provided for their implementation will be discussed in more details in Chapter 8.

³³¹ See Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 256-63.

income tax payable compared to only a deduction from aggregate income practised for almost thirty years since 1947.³³²

In 1994, a scheme where zakat deduction for government employees could be debited by the department through a mediatory body called the Angkasa Management Bureau, was approved by the Jabatan Akaun Negara (National Account Department).³³³ In April 1996, a unit trust company which was backed by the government, the Amanah Saham Nasional Berhad announced that zakat on dividend received by Muslim depositors could be deducted at source. The company would then disburse the zakat to the respective MAINs based on the address of the depositors. With an investment valued at M\$23 billion for the unit trust specifically allocated to *bumiputras*,³³⁴ the zakat contribution would be tremendous to the MAINs.³³⁵

3.3.7 Capital Assistance Schemes

Prior to the 1990s, investments of zakat by the MAINs were mostly made to increase their understanding of Islamic teachings and improve their religious and social wellbeing besides to increase the value of surpluses of zakat or in expanding the MAINs' assets. Scholarships were awarded to students from poor families to give them equal opportunities to tertiary education, especially for those studying Islamic studies. Zakat was also spent to finance the development and maintenance of religious institutions as well as for the dissemination of Islamic teachings.

³³² See Mohd Shukor Mahfar, "Layanan Bayaran Zakat Mengikut Peruntukan ACP 1967", http://zakat.com.my/store/LAYANAN_BAYARAN_ZAKAT_lhdn_.pdf. (accessed on 12 Dec. 2009). Mohd Shukor at that time was the deputy director general of the Inland Revenue Board of Malaysia.

³³³ PPZ, Laporan Zakat 1994, 33.

³³⁴ *Bumiputra* is a Malay term referring to the sons of the soil of Malaysia, the majority of which is Malay Muslims.

³³⁵ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 318.

There were also instances of capital assistance provided to needy and poor entrepreneurs in the 1980s to help them earn better income. In the Wilayah Persekutuan, the Baitul Division of MAIWP, since the early 1980s, has allocated zakat to assist the *fuqarā'* and *masākīn* operating small ventures. The allocations included mobile kiosks, small appliances and cash to buy supplies for their entrepreneurship.³³⁶

From the 1990s onwards, reforms were made at the MAINs in distributing zakat to the poor among the recipients where better structured programmes of capital assistance which directly involved the recipients started to be introduced.

In 1994, following various developmental programmes³³⁷ introduced by the government which directly targeted the hardcore poverty in the country,³³⁸ MAIWP and LZS started to distribute capital assistance for interested and eligible recipients who wanted to engage in small business enterprises or expand their small businesses funded by the zakat fund. The scheme's main objective was to help interested recipients of zakat to engage in small business enterprises by providing starting up or operational

³³⁶ Hussin Rejab, "Baitulmal dan Peranannya: Satu Pengalaman" (paper presented at Seminar Sistem Kewangan Islam, Bangi, Selangor, 14 – 15 Jan. 1984). Hussin at that time was the Deputy Director, Baitulmal Division of MAIWP and had served at MAIWP since 1977.

³³⁷ These developmental programmes targeted the hardcore poverty by providing small capital loans and training for the hardcore poor to establish their own enterprises. Among the organizations offering these schemes are like the Amanah Ikhtiar Malaysia and Yayasan Basmi Kemiskinan Selangor. The rate of success of these schemes may have influenced the decision of the MAINs to also introduce similar schemes for the recipients. See <http://www.aim.gov.my/>.

³³⁸ In 1991, the Steering Committee on the Development of Islamic Economy established by the Prime Minister's Department and several other federal agencies proposed to the MAINs and their Department of Religious Affairs to disburse zakat in tandem with the federal government's eradication policy given the similarity between the policy's aims and the purpose of zakat disbursement for the *fuqarā'* and *masākīn*. See Report of Working Committee on the Formulation of Main Programmes for the Development of Islamic Economy, Prime Minister's Dept., n.d.; Report of Action Committee to the Steering Committee on the Development of Islamic Economy, October, 1990; Report of the Information Database Working Group to the Steering Committee on the Development of Islamic Economy, Closed Workshop, Malacca, January 1991.

capital to start or expand their enterprises. Assistance was also provided to buy tools, machines, vehicles and such to provide facilities to conduct businesses and engage in works.³³⁹ In Selangor, at first, the assistance was provided as a one-off payment of zakat where the recipients would have no obligation in returning the assistance even if their ventures failed. But later in 1998, due to the scheme's failure to improve the recipients' livelihood, the scheme was revised whereby the assistance was given partly free to the recipients and partly in loans which had to be paid back to the LZS in a contracted period. The loan would only be given back to the recipients if they were found to be successful in their venture at the end of the contracted period.³⁴⁰

3.3.8 The Legal Settings: The Enactments and the *Fatwās*

The Constitution of Malaysia or the Federal Constitution, which is the supreme law of the country under its ninth schedule, specified that Islamic laws are to be regulated by state enactments, and the power to legislate on these matters is vested in the state legislatures and the sultans. The regulation of Islamic laws, which are only applicable to Muslims, covers such laws as matrimonial law, charitable endowments (*waqf*), zakat, bequests, inheritance and offences against religion. Thus to a large extent the issue of religious liberty hinges upon the substantive provisions of the laws governing religion in each state and, as will be shown later, has a far reaching consequence in shaping the way that zakat investment is implemented in each state.

³³⁹ Radhiana Ahmad Johdi, "Perlaksanaan Skim Bantuan Perniagaan di Baitulmal MAIWP dan Kesannya: Kajian di Wilayah Persekutuan" (B.A. diss., University of Malaya, Malaysia, 2001), 37-8.

³⁴⁰ See "Fatwa Tentang Sistem Agihan Zakat Negeri Selangor" gazetted on 29 August 1994 and "Keputusan Jawatankuasa Perunding Hukum Syara' (Fatwa) Negeri Selangor Darul Ehsan Mengenai Pembaharuan dan Perlaksanaan Agihan Modal" held on 23 March 1998, <http://www.e-fatwa.gov.my> (accessed on 27 June 2009).

Under the states' Islamic law legislations, in each state a council commonly known as Majlis Agama Islam Negeri (State Religious Islamic Council) or MAIN is established and accorded extensive jurisdiction over the administration of religious affairs except on matters relating to the establishment of *fatwās* and adjudication of the Islamic laws which have been assigned to the Jabatan Mufti (Office of the Mufti) and the Mahkamah Syariah (Sharī'a Court) respectively. Accordingly, these laws only apply in the state concerned and are administered by a separate court system than the federal ones, whose constitution, organization and procedures are under the jurisdiction of the states. The MAINs, however, still act as the main authority regarding religious affairs in the states³⁴¹ and are given the right to formulate general policies and control mechanisms of their execution.

By and large, there are three authoritative sources of zakat laws; the states' Islamic administrative enactments and their subsidiary legislations which are more administrative in nature,³⁴² the Sharī'a criminal offences enactments and also the *fatwās*³⁴³ issued by the Jabatan Mufti in each state.³⁴⁴

³⁴¹ This is true for all states except for the Federal Territories whereby the law of zakat and its administration are governed by the Federal Government. See Suwaid Tapah, "Perlaksanaan Undang-undang Islam di Malaysia: Realiti dan Harapan", <http://kias.edu.my/pelundang.htm> (accessed on 6 Aug. 2008). See also Article 3, Federal Constitution of Malaysia.

³⁴² Only in the state of Kedah and Sabah there are different statutes for zakat law. Siti Mashitoh Mahammod, "Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan" (paper presented at Persidangan Zakat dan Cukai Peringkat Kebangsaan, Kuala Lumpur, 22 May 2007), 3-4.

³⁴³ *Fatwā* in its basic form, according to Hallaq, "consists of a question addressed to a mufti (jurisconsult), together with an answer provided by that mufti." Throughout the Islamic law history especially after the second hijra, *fatwās* provided a continuous source from which the law derived its ever-expanding body of material (*furū'* or substantive laws). Wael B. Hallaq, "From *Fatwās* to *Furu'*", *Journal of Islamic Law and Society*, 1: 1 (1994), 31, 55.

³⁴⁴ In Malaysia, the MAINs have their own committee (Jabatan Mufti) which is headed by a Mufti which role is among other things, to issue an authoritative *fatwā* on any matter related to the religion. The *fatwās* which are gazetted by the state government becomes binding to all

The laws of zakat are specifically provided under the states' respective administration of Islamic law enactments. Only in the states of Kedah and Sabah are there independent zakat enactments which, compared to provisions of zakat in the administration of Islamic law enactments, are more systematic substantive measures that provide better facilities for zakat enforcement.³⁴⁵ Since the enactments differ from one state to another, the rules governing zakat matters—for example, the obligatory zakatable items as well as the punishment for various zakat-related offences—to a certain degree differ from one another.³⁴⁶ Apart from these enactments, there are also several subsidiary legislations which provide additional provisions to support the administration of the enactments.³⁴⁷

Typical zakat laws in the states' Islamic administrative enactments include the obligation to pay zakat on eligible owners of zakatable wealth,³⁴⁸ and their obligation to provide their financial statements for zakat assessment upon request by the states' MAINs.³⁴⁹ The rest of the enactments that relate to zakat are basically administrative policies like the objective of the religious wealth management under the MAIN,³⁵⁰ the right and responsibilities of the MAIN in collecting and disbursing the zakat, their

Muslims in that particular state. There are also other *fatwās* issued by these committees which are not gazetted but becomes the religious guidelines for the MAINs administration. See <http://www.e-fatwa.gov.my/e-fatwa.asp> (accessed on 20 June 2009).

³⁴⁵ Mahamood, "Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan".

³⁴⁶ Mohd Daud Bakar, "The Malaysian Zakat System: Law and Policy Reform", *IKIM Law Journal*, 2: 2 (1998), 20-22.

³⁴⁷ Some examples are like Peraturan-Peraturan Zakat dan Fitrah (Perak) 1975, Peraturan-Peraturan Zakat dan Fitrah (Johor) 1962, Peraturan-Peraturan Pungutan Zakat dan Fitrah (Negeri Pulau Pinang) 1979, Kaedah-Kaedah Zakat Dan Fitrah (Pahang) 1970 and Kaedah-kaedah Baitulmal (Wilayah Persekutuan) (Perbelanjaan dan Penggunaan) 1980.

³⁴⁸ Sec. 16, Administration of Islamic Law Act (Federal Territories) 1993.

³⁴⁹ Sec. 108, Council of Religion and Malay Custom Enactment (Kelantan) 1994; Sec. 72(2), Administration of Islamic Affairs Enactment (Terengganu) 2001.

³⁵⁰ Sec. 7(1), Administration of Islamic Law Enactment (Selangor) 2003.

rights in the appointment of *‘āmilūn*,³⁵¹ their responsibilities in preparing financial budgets and annual reports for all of the religious properties under their management (which includes zakat),³⁵² etc. Meanwhile, the law that concerns zakat in the Islamic law criminal offences enactments relates to the offences of collecting zakat without the permission of the MAINs.³⁵³

On the other hand, the *fatwās* function as new rulings on emergent cases of Islamic law whereupon publication in the state gazette become binding on every Muslim in that particular state.³⁵⁴ There are also *fatwās* issued by the responsible authority which are not gazetted but become the religious guidelines for the public and in some cases for the MAINs administration. The *fatwās* are basically new additions to the Islamic laws codified in the above enactments for they represent the most relevant and updated legal opinions according to the needs of the society as it had developed and changed by a certain point in time.

As indicated above, the authority to establish and issue a *fatwā* is granted to the Jabatan Mufti in each state. It is worthy to note that the *Muftis* and the Legal Committees are the states' servants and as such as paid by the states. In issuing a *fatwā*, the Muftis and the Legal Committees are required ordinarily to follow the orthodox tenets of the Shāfi'is school, but where the public interest so requires, the *fatwā* may be given according to the tenets of other schools of Islamic law.³⁵⁵ Since the prevalent school of Islamic law in

³⁵¹ Sec. 87, Administration of Islamic Law Enactment (Selangor) 2003; Sec. 108(3), Council of Religion and Malay Custom Enactment (Kelantan) 1994.

³⁵² Sec. 82, Administration of Islamic Law Enactment (Selangor) 2003; Sec. 67 Administration of Islamic Law Act (Federal Territories) 1993.

³⁵³ Sec. 37, Syariah Criminal Enactment (Selangor) 1995; Sec. 33 and 34, Syariah Criminal Offences Act (Federal Territories) 1997.

³⁵⁴ The *fatwā*'s authority is stated in all the states' Islamic administrative enactments. See for example Sec. 49(1), Administration of Islamic Law Enactment (Selangor) 2003. The non-gazetted decision made by the Mufti is considered as an opinion and is non-enforceable. See <http://www.e-fatwa.gov.my/e-fatwa.asp> (accessed on 20 June 2009).

³⁵⁵ Sec. 39, Administration of Islamic Law Act (Federal Territories) 1993 reads, "(1) In issuing any fatwa or certifying any opinion, the Mufti shall ordinarily follow the accepted views of the

the country is the Shāfi'īs, the *fatwās* issued, including those that concern zakat, are dominantly influenced by the views of this school though there are cases where other schools of Islamic law were also adopted.³⁵⁶ Examples of such adoption are like the *fatwās* on the obligation to pay zakat on derived income (*māl mustafād*) which is yet to reach *ḥawl*,³⁵⁷ and transfer of zakat to other states by the zakat institution.³⁵⁸

In the states' Islamic administrative enactments, there are no specific rulings on zakat investment. There are, however, several enactments which give indications that enable us to safely assume that zakat as one of the Islamic religious properties managed by the MAIN can be invested if the MAINs so wished. Such enactments are like the ones that make it the responsibility of the MAINs to promote and develop the social and

Mazhab Syafie. (2) If the Mufti considers that the accepted view of the Mazhab Syafie will lend to a situation which is repugnant to public interest, the Mufti may follow the accepted view of the Mazhab Hanafi, Maliki, or Hanbali. (3) If the Mufti considers that none of the *qaul muktamad* of the four Mazhab may be followed without leading to a situation which is repugnant to public interest, the Mufti may then resolve the question according to his own judgement without being bound by the *qaul muktamad* of any of the Mazhabs." See also Sec. 54(1), (2) and (3), Administration of Islamic Law Enactment (Selangor) 2003.

³⁵⁶ A study on the influence of the Shāfi'īs on the *fatwās* of zakat in the state of Terengganu found that as early as the 1950s, the state authority responsible in issuing the *fatwās* has started to issue *fatwās* which are not based exclusively on the dominant Shāfi'īs opinion regarding every point. The authority rather adopted an eclectic selection of provisions from other schools of laws provided that they had adequate authority in those particulars which are deemed by the committee so specified in the public interests. See Wan Zulkifli Wan Hassan "Pengaruh Mazhab Shafi'i Dalam Fatwa Mengenai Zakat Di Terengganu: Kajian dari Tahun 1953-2005" (PhD thesis, University of Malaya, Malaysia, 2009), 244-333. The same conclusion also was given by another study on *fatwās* in the state of Kelantan's *fatwās*. See Noor Naemah Abd Rahman and Mohd Nor Hashri Junoh, "Pendekatan Ijtihad Tarjihi Dalam Amalan Fatwa Jemaah Ulama Negeri Kelantan: Rujukan kepada Fatwa-fatwa 1990an", *Jurnal Syariah*, 11: 2 (2003), 35.

³⁵⁷ The obligation to pay zakat on income without the completion of its *ḥawl* was based on the view of Dāwud al-Zāhirī and is against the accepted view of the Shāfi'īs. See Noor Naemah and Nor Hashri, "Pendekatan Ijtihad Tarjihi Dalam Amalan Fatwa Jemaah Ulama Negeri Kelantan: Rujukan kepada Fatwa-fatwa 1990an", 47-9.

³⁵⁸ Even though transfer of zakat by state to other state is allowed by the Shāfi'īs, other schools' views also was referred to in the case of a Terengganu's *fatwā* in clarifying that the decision on transfer can be made at the state's discretion. See Wan Zulkifli, "Pengaruh Mazhab Shafi'i Dalam Fatwa Mengenai Zakat Di Terengganu: Kajian dari Tahun 1953-2005", 241-4.

economics well beings of the Muslims. The MAINs thus are allowed to undertake any investment activities under the Akta Pemegang Amanah [Trustee Act] 1949 and to engage in any commercial and industrial activities that benefit the MAIN including producing, processing, packaging, grading and marketing production goods and to set up rules to facilitate its collection, distribution and administration of the states' zakat which provide them with the power to undertake investments of zakat if they wished.³⁵⁹

The *fatwās* related to zakat investment as compared to the above administrative enactments on the other hand are more abundant. Given the nature of a *fatwā* whereby it is commonly issued only as a response to a particular issue, the *fatwās* are more specific to certain issues pertaining to the investment of zakat and are less similar in content from one state to another. The *fatwās* issued by the states that are related to zakat investment include those concerned with the utilization of zakat to finance the development of factories and industries which employ the recipients, the investment of surpluses of zakat, the disbursement of capital assistance to the *faqīr* and *miskīn*, and the utilization of zakat for the dissemination of Islamic teachings and scholarships for further education.³⁶⁰

It is worth noting that suggestions that the MAINs should obtain *fatwās* pertaining to the issues of zakat investment which directly involved the recipients were made as early as the late 1970s. In 1977, the resolutions of a seminar attended by Zakat and

³⁵⁹ See for examples Sec. 7(2) and 60(3), Administration of Islamic Law Act (Federal Territories) 1993; Sec. 7(1), 7(2)(a), 72(d) and 7(2)(f) and Sec. 87, Administration of Islamic Law Enactment (Selangor) 2003. The earliest enactment which specifically stated that the MAIN's revenue is to be utilized for Muslims economic development was that of the state of Kelantan enacted in 1966. The enactment reads, "All property, investments and funds, including the fund heretofore constituting the Bait-ul-Mal, which are vested from time to time in the Majlis for the purposes of this Enactment, ... shall be held by the Majlis in trust for such charitable purposes for the support and promotion of the Islamic religion, or for the benefit of Muslims in the State of Kelantan in accordance with Hukum Shara', ...". Sec. 17, Kelantan Council of Religion and Malay Custom Enactment, 1966.

³⁶⁰ More discussion on these *fatwās* will follow in the following Chapter 5 and 6.

Baitulmal officers organized by the Pusat Islam suggested that the MAINs should seek *fatwās* regarding the postponement of distribution to the *fuqarā'* and *masākīn* for investment and the depositing of excess revenue from zakat, after disbursement to all recipients, into the Baitulmal so that it could be invested in the best interest of the Muslim society.³⁶¹ However, the first *fatwās* relating to such investment of zakat only appeared in the early 1990s.

In 1994, the Jawatankuasa Perunding Hukum Syara' (Fatwa) Negeri Selangor (the *fatwā* committee of the state of Selangor) issued a fatwa allowing capital assistance for the *fuqarā'*, *masākīn* and *mu'allafat qulūbuhum* in the state. The *fatwā* clearly outlined that the capital assistance could be given either in the form of money, business venues and training.³⁶² Another *fatwā* regarding the capital assistance was issued in 1998 where a new approach of allocating capital assistance to the above groups of recipients was allowed due to failures of the first approach. Instead of free capital assistance, new capital assistance would be given in two parts; capital which is given free and capital which has to be paid back to the LZS in a certain period of time. The LZS would release all of the capital back to the recipients only once the instalments were paid back.³⁶³

The Jawatankuasa Fatwa of the State of Terengganu ruled in 1997 that due to delay in transferring the ownership of zakat to the recipients, any investment of zakat in financial institutions was not allowed. However, zakat could be invested in establishing manufacturing factories and providing working tools for the *fuqarā'* and *masākīn* and

³⁶¹ See resolutions of the "Perjumpaan Pegawai-pegawai Zakat/Baitulmal, Jabatan Ugama Islam Negeri-negeri, 1977/1397", organized jointly by the Majlis Ugama Islam Wilayah Persekutuan and the Prime Minister Department, Kuala Lumpur, May 1977.

³⁶² See "Fatwa Tentang Sistem Agihan Zakat Negeri Selangor" gazetted on 29 August 1994. See <http://www.e-fatwa.gov.my> (accessed on 27 June 2009).

³⁶³ See "Keputusan Jawatankuasa Perunding Hukum Syara' (Fatwa) Negeri Selangor Darul Ehsan Mengenai Pembaharuan dan Perlaksanaan Agihan Modal" held on 23 March 1998. See <http://www.e-fatwa.gov.my> (accessed on 27 June 2009).

their children if the facilities could help them with the works and training that enabled them to earn an income.³⁶⁴

There were several *fatwās* on the permission to invest any excess of zakat collection. The Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan in December 1995 gave consent to the Baitulmal of MAIWP to invest the excess after the distribution of zakat (*al-fā'id*) in the most liquid asset possible which could guarantee that the invested zakat be recalled easily at any time.³⁶⁵ In an earlier *fatwā* on January 1995, the committee decreed that the excess of allocations for the *fī sabīl li Allāh* group could be used for the dissemination of Islamic teachings.³⁶⁶ In the state of Terengganu, the fatwa on excess of zakat was issued in 2007 and specifically mentioned that an excess of zakat collection could be invested in any investment projects as long as it benefits the recipients of zakat.³⁶⁷

Overall, it can be concluded that investment of zakat is generally approved by the MAINs as reflected by the states' administration of Islamic law enactments and the *fatwās*. The *fatwās* that were issued relating to the investment of zakat were scattered and did not necessarily address the same issues from one state to another. The *fatwās* were also more likely to be issued by the states with a more pronounced amount of collection and undoubtedly with more capabilities and needs to undertake investment.

From another perspective, the segmentation of the Islamic jurisdiction to the states also highlights another concern in implementing zakat investment in the country. Transfer

³⁶⁴ Minit Kali Ke-2, Penggal ke-4, Bilangan (iii), Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu, held on 19 Jan. 1997.

³⁶⁵ See *fatwā* issued by the committee in its 34th meeting held on 20 Dec. 1995 in *Keputusan-keputusan Mesyuarat Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan : 6 Mac 1975 hingga 6 Mei 2002* (Kuala Lumpur: Jabatan Perdana Menteri, 2002), 198.

³⁶⁶ See *fatwā* issued by the committee in its 40th meeting held on 17 Jan. 1995, in *Keputusan-keputusan Mesyuarat Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan : 6 Mac 1975 hingga 6 Mei 2002* (Kuala Lumpur: Jabatan Perdana Menteri, 2002), 197.

³⁶⁷ Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu, minute no. 7, term no. 7, held on 31 Jan. 2007.

of zakat from one state to another can only be conducted with the approval of the rulers. If the main purpose of zakat investment wants to be upheld, then this hindrance must be removed to enable mobilization of zakat from a state with a surplus of zakat revenue to a state which has non-sufficient zakat fund to sustain the need of its poor.

3.3.9 Conclusion

Since early in the MAINs' inception, zakat occupied a significant place in their administration because zakat is their main revenue. Many of the policies made are centred based on this reality.

The collection and distribution of zakat was managed by specialized units or departments at these MAINs which disbursed the collected zakat to the groups of recipients outlined in the Quran, especially for the poor, the needy, the administrators and for the sake of Allah. In distributing the zakat, the MAINs not only disbursed it to fulfil the current needs of the recipients, such as for food, clothing and shelter for the poor or the allowances for the administrators, but also for the recipients' future benefits, especially for the purpose of dissemination of Islamic teachings. Apart from this, there were also other forms of investment of zakat that took place at these MAINs. The investments were sourced from surpluses of zakat collection resulting from the undistributed zakat revenues at these MAINs. These surpluses were invested in the financial system and also in acquisition of real properties which became owned by the MAINs thus expanding the funds value and also their assets holding, besides benefiting the recipients or Muslims at large.³⁶⁸

From the late 1950s onwards, influenced by thoughts on zakat from the Middle East and Indo-Pakistan region, the ideas of zakat as a source for Muslims' economic development started to appear and occupied much of the local conferences on Muslims'

³⁶⁸ Hussin "Baitulmal dan Peranannya: Satu Pengalaman".

issues. These conferences believed that the investment of zakat was a necessary conduit to achieve better economic development for Muslims and especially the poor among them. Even though at this juncture the MAIN have already been established as a corporate body with juristic characteristics that conferred them with the discretionary authority to invest in any manner to fit the accumulated revenue from zakat, consequent findings on the state of zakat and its administration showed that the operational settings for these investments were far from ready for its implementation. The collection at the state zakat institutions was found to be very low which would become a huge financial constriction if the idea wanted to be implemented. It was also found that the excess of collection after distribution to the recipients was used unproductively, enhancing the perceived inefficiencies of the agencies.³⁶⁹ There were also administrative issues like irregular zakat laws and policies between the states, lack of enforcement, and inadequate management personnel. Technical constraints such as the lack of expertise to conduct proper investment planning and implementation also prevented them from utilizing the opportunities to develop and expand the benefits of zakat in such a way as to develop the Muslim society. Given the lack of zakat collection and the inefficiencies of the MAINs, nothing much could be done at that time to realize the idea.

Foreseeing these obstacles, scholars suggested that to enable the investment of zakat which benefited Muslims' development, collection of zakat must be increased and the issues of inefficiency that engulfed the states' zakat administrations must be solved. These two issues became the focus point of the efforts of the federal government and the MAINs to realize the idea of zakat as a main source of Muslim economic development throughout the 1980s and the 1990s.

³⁶⁹ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 264-8.

In a bid to increase the amount of zakat collected, initiatives were undertaken by both the MAINs and the federal government, ranging from the shift of collection from an emphasis on *zakaāt al-fiṭr* to zakat on wealth, particularly zakat on business, to the imposition of zakat on income. Attempts were also made by the federal government to create a centralized zakat authority and zakat fund which were deemed as the necessary mechanisms not only to streamline zakat laws and policies to solve the problems of zakat's administrative inefficiencies but also to mobilize a significant amount of zakat funds that enabled beneficial investments to render significant effects on Muslim development.

As a result of these measures, from the late 1980s onwards, there were marked increments in the collection of zakat on wealth, in particular from zakat on income and business. The collection in Selangor, for example, increased more than 26 times from M\$7.5 million in 1991 to M\$159.8 million in 2006.³⁷⁰

In the 1990s and early 2000s, several of the MAINs took the initiative to introduce a corporate management style in the administration of their zakat by incorporating their zakat collection and distribution departments. Personnel educated in contemporary management techniques and modern information technologies were employed to increase the inefficiency at these MAINs. By the late 1990s onwards, as a result of the fusion of modern corporate management styles and expertise in these zakat institutions, and combined with the country's economic prosperity, a rise in the number of middle class Malays, and so forth, the collection of zakat, especially at these incorporated zakat institutions, increased tremendously. The increments enabled the zakat institutions to invest more heavily not only in the typical expenditures for the dissemination of Islamic teachings and investment of surpluses in the financial system but also in some instances in establishing subsidiaries which could further benefit the recipients directly or indirectly. The increments also enabled the zakat institutions

³⁷⁰ See Appendix A for further examples of the growth in the collection of zakat in Malaysia.

which were influenced by the targeting approach adopted by several development agencies, to introduce in the mid-1990s a more structured capital assistance for the poor recipients, as well as to provide them with the opportunities and facilities which could empower them with the necessary skills to enter the labour market, thus deepening further the types of zakat investment in the country.

The above discussion also reveal that the states' administration of Islamic law enactments and the *fatwās* which are two important sources of legal guide for the administration of zakat, in general, approved investment of zakat. The states' administration of Islamic law enactments, however only provide general allowances to invest zakat. There are no particular rulings which provide more detail guidelines on how to manage the investment. Even though the *fatwās* were found to provide more specific rulings on the issues related to zakat investment like on *tamlīk* and excess of zakat, still these *fatwās* were found not as extensive as the *fatwās* issued by the international Muslim organizations. The study also finds that not all of the issues raised by Muslim scholars were addressed by the states' *fatwā* committees.

More importantly, it is also noted that the *fatwās* are issued by the *muffis* who are actually the states' servants. This arrangement has the potential to undermine the impartiality of the decision made by the *fatwā* committee. Serving the same source of power i.e. the state, there is a probability that the *fatwās* issued might prioritize the purpose of the zakat institutions - which are also entities of the states - above the rights of the recipients. This is exemplified by a *fatwā* issued to address the losses made by MAIWP in 1992 in unit trust funds funded by zakat. The *fatwā* made by the Mufti at that time advised them not to withdraw the invested zakat until its value return to its par. He also advised that the invested zakat is channelled to other investment vehicles

which can increase its value.³⁷¹ This *fatwā* is inconsistent with a *fatwā* of the state of Terengganu which ruled that the loss incurred by a zakat fund must be replaced by the person responsible for the loss.³⁷²

The lack of more detailed regulations on investment of zakat, the segmentation of the Islamic law jurisdiction, the patchiness and inconsistencies of the *fatwās* on zakat investment, the conflicting roles of the *muffis* who provide the *fatwās* but at the same time are states' employees serving the MAINs as well as the dependent of the MAINs on zakat revenue raise further concerns about the conducts and ability of the MAINs in investing zakat.

³⁷¹ Interview with Rafidah Ab. Rahman, Assistant Manager, Investment Unit, Development and Investment Division, MAIWP, 19 June 2008.

³⁷² See *fatwā* issued by the Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu in its 10th Meeting on 14 Feb. 1999.

Chapter Four

Zakat Investment and *Maqāṣid al-Sharīʿa*

4.0 Introduction

This chapter attempts to analyze the objectives of *Sharīʿa* (*maqāṣid al-Sharīʿa*) in the obligation of zakat particularly its significance in investment of zakat. The chapter starts with the definitions of *maqāṣid al-Sharīʿa*, its position in the theory of *maṣlaḥa* and the significance of *maqāṣid al-Sharīʿa* in the establishment of Islamic law. The chapter ends with an analysis of the *maqāṣid al-Sharīʿa* of zakat as outlined in the Quran and hadith particularly those of importance to zakat investment.

4.1 Maqāṣid al-Sharīʿa

4.1.1 Introduction

Maqāṣid is a plural noun of *maqṣid*. The term refers to a principle, purpose, end, goal or objective. *Maqāṣid al-Sharīʿa* are the purposes or objectives behind the rulings of Islamic law which are embodied in the divine texts.³⁷³ The purpose of law sometimes can be present explicitly in a text as exemplified by the prescription of *qīṣaṣ* (retaliation) in the Quran. The Quran outlining the rationale which is to prevent further killing says, “In the law of equality there is (saving of) life to you ...”³⁷⁴ Similarly, when the Quran prohibits wine and gambling. It says that both are the works of the devil as they cause quarrel and instill hatred and enmity among Muslims. The Quran says, “The devil’s plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from remembrance of Allah and from prayer.”³⁷⁵ But most often the divine texts do not explicitly explain the purposes of a law and a full understanding of the sacred texts is necessary to benefit from the spirit of law.³⁷⁶

The purpose of law can be the goal of the entire Islamic law and can be specific to a certain chapter or case of the Islamic law. A general purpose is like to attract benefits and to remove harms, to ease a hardship, etc., while a specific *maqṣid* is like ensuring

³⁷³ Wahbah al-Zuhaylī, “Maqāṣid al-Sharīʿa: Asās li Ḥuqūq al-Insān”, *Kitāb al-ʿUmma*, 87 (1423H), 70.

³⁷⁴ Qur. 2: 179; Kamali, *Principles of Islamic Jurisprudence*, 395-7.

³⁷⁵ Qur. 5: 91.

³⁷⁶ Muḥammad al-Ṭāhir ibn ʿĀshūr, *Maqāṣid al-Sharīʿat al-Islāmiyya*, 2nd ed. (Amman: Dār al-Nafāʾis, 2001, 190-5.

welfare of children in family law or to empathize with the poor in the obligation of fasting.³⁷⁷

Initially in the history of the establishment of Islamic law, *maqāṣid* were never studied as a standalone topic of Islamic jurisprudence. Usually, *maqāṣid* were discussed under the category of ‘unrestricted or unregulated interests’ (*maṣāliḥ mursala*) or the appropriate attribute for analogy (*munāsabat al-qiyās*).³⁷⁸

4.1.2 Maqāṣid and Maṣlaḥa

Maṣlaḥa or its plural form, *maṣāliḥ* literally translates as significant benefit, utility or interest which may continuously or intermittently occurs to an individual or society.³⁷⁹ Technically, *maṣlaḥa* is a legal method of deriving Islamic ruling whereby matters of which are of public interest are considered when no textual authority can be found on its validity or otherwise. *Maṣlaḥa* is accepted among the Muslim jurists as a source of Islamic law because the basic purpose of legislation (*tashrīʿ*) is to protect the interest of people against harm.³⁸⁰ According to al-Ghazālī, *maṣlaḥa* essentially means seeking utility (*manfaʿa*) or removing harm (*maḍarra*). These are the purposes (*maqāṣid*) of which mankind has to aim and realize. Only when *maṣlaḥa* is harmonious and consistent with

³⁷⁷ Aḥmad al-Raysūnī, *Nazariyyat al-Maqāṣid ʿinda al-Imām al-Shāṭibī* (Riyadh; al-Dār al-ʿĀlamiyya, 1995), 19-20; Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, 4-5.

³⁷⁸ Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī, *al-Mustasfā min ʿIlm al-ʿUṣūl* (Jeddah: Sharikat al-Madīnat al-Munawwara li al-Ṭibāʿa, n.d.), v. 2, 478-81; Kamali, *Principles of Islamic Jurisprudence*, 272-3.

³⁷⁹ Ibn ʿĀshūr, *Maqāṣid al-Sharīʿat al-Islāmiyya*, 278.

³⁸⁰ Al-Ghazālī, *al-Mustasfā min ʿIlm al-ʿUṣūl*, v. 2, 481-2; Fecilitas Opwis, “Maslahah in Contemporary Islamic Legal Theory”, *Islamic Law and Society*, 2: 2 (2005), 183.

the objectives of the *Sharīʿa*, the objectives or intentions of the law could be preserved.³⁸¹ Essentially, *maṣlaḥa* is the embodiment or manifestation of the purposes of *Sharīʿa*. Al-Shāṭibī believes that *maṣlaḥa* is not just a matter of consideration of human interest in determining the law rather it is a practice of *ijtihād* in understanding the Lawgiver's intentions (*maqāṣid*).³⁸² Given this inter-relatedness of *maṣlaḥa* and *maqāṣid al-Sharīʿa*, many Islamic legal theories used *maqāṣid* interchangeably with *maṣlaḥa*.

Maṣlaḥa is divided into three classification based on the availability of a textual authority supporting its existence. *Maṣlaḥat muṭtabara* (accredited benefit) is a *maṣlaḥa* which the Lawgiver has expressly upheld through the sacred texts. In this type of *maṣlaḥa*, the purpose of law is clearly declared by the Quran and Sunna. Hence, the validity of this *maṣlaḥa* is definitive. An example is the allowance to combine prayers when one is travelling due to hardship and hassle of traveling. It was reported from Saʿīd ibn Jabīr that ʿAbdullā ibn ʿAbbās said that the Prophet Muhammad combined the prayer of *Zuḥr*³⁸³ and *ʿAṣr*³⁸⁴ and between *Maghrīb*³⁸⁵ and *ʿIshāʾ*³⁸⁶ while he is still in Medina not due to any fear or rain. When Saʿīd asked Ibn ʿAbbās the reason of this, he replied that the Prophet did so in order not to cause any hardship upon his nation. In this instance, the hadith has clearly pointed out that hardship is the purpose behind the allowance to combine the prayers.³⁸⁷ Other examples include the prohibition of

³⁸¹ Al-Ghazālī, *al-Mustaṣfā min ʿIlm al-ʿUṣūl*, v. 2, 481-2.

³⁸² See Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿa* (Egypt: Al-Maktabat al-Tijāriyyat al-Kubrā, 1975), v. 4, 18-9.

³⁸³ Prayer that is obliged on Muslim at noon.

³⁸⁴ Prayer that is obliged on Muslim at late noon.

³⁸⁵ Prayer that is obliged on Muslim at dusk.

³⁸⁶ Prayer that is obliged on Muslim at night.

³⁸⁷ See Abū Sulaymān Ḥamd ibn Muḥammad al-Khaṭṭābī, *Maʿālim al-Sunan wa Huwa Sharḥ Sunan Abī Dāwūd* (Ḥalab: Maṭbaʿa Muḥammad Rāghib al-Ṭabbākh, 1932), v. 1, 265

intoxicants due to their ability to influence one's rationale,³⁸⁸ and the prescription of *qīṣaṣ* (retaliation)³⁸⁹. *Maṣlaḥat mulgha* (nullified benefit) is public interest which has been nullified directly or indirectly by the Lawgiver through the sacred texts. Examples are like prohibition of *ribā*,³⁹⁰ the assignment of double the portion of daughter to son in inheritance law, etc. The third *maṣlaḥa* is *maṣlaḥat mursala*. This *maṣlaḥa* is not upheld or nullified directly by the Lawgiver in the sacred texts but has a proper attribute to justify the necessary legislation. Its proper attribute that necessitates legislation could be deduced from the general principles of the Quran and Sunna.³⁹¹ An example of the adaptation of *maṣlaḥat mursala* in the derivation of an Islamic law is the refusal of Mālik to pay zakat to the *mu'allafat qulūbuhum* (which is one of the groups of recipients obliged by a Quranic verse³⁹²) due to the strength of Islam during his time.³⁹³ Other examples include the compilation of the Quran and the obliteration of the unauthenticated versions of the Quran, the refusal of Caliph ʿUmar to amputate the hand of a thief, etc.³⁹⁴

³⁸⁸ On the prohibition of intoxicants, the Quran says, "The devil's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from remembrance of Allah, and from your prayer ..." Qur. 5: 91.

³⁸⁹ See footnote 373 above.

³⁹⁰ An example of this is the prohibition of interest (*ribā*) on loan. Interest is charged on a loan as a compensation for the creditor who forsakes the present consumption of the lent amount. It also works as a motivation incentive to ensure that the borrower will pay the promised amount in time or earlier. The apparent *maṣlaḥa* of *ribā*, however, is clearly nullified by a clear prohibition in the Quran which says, "O ye who believe! Devour not usury, doubled or multiplied; but fear Allah..." Qur. 3: 130.

³⁹¹ Al-Ghazālī, *al-Mustaṣfā min ʿIlm al-ʿUṣūl*, v. 2, 478-81; Kamali, *Principles of Islamic Jurisprudence*, 272-3.

³⁹² Qur. 9: 60.

³⁹³ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, 320.

³⁹⁴ Kamali, *Principles of Islamic Jurisprudence*, 270.

Maṣlaḥa can become a basis of law as long as certain conditions are fulfilled. Foremost, the *maṣlaḥa* must be compatible with the universal *Sharīʿa* principles and goals. It must secure the benefit or prevent the harm to the people as a whole and not for any personal benefit or for any particular individual or group. The new ruling also must not clash with an established ruling as found in the sacred texts or one which has been decided by an *ijmāʿ* (consensus).³⁹⁵

The above discussion indicates that *maṣlaḥa* and *maqāṣid* are inter-related since the applicability of *maṣlaḥa* as a method of deriving Islamic law depends much on its comparability with the purposes of law.

4.1.3 *Maqāṣid* in the Establishment of Islamic Law

The validity of *maṣlaḥa* as a source of Islamic law has always been a continuous debate among the jurists. The jurists are in agreement that *maṣlaḥa* is not a legal force in respect of devotional (*ʿibāda*) matters and in cases where there are already specific injunctions by the Lawgiver (*muqaddarāt*) like the prescribed penalties (*ḥudūd*), *niṣab* of zakat, and etc.³⁹⁶ The majority of the jurists, however, validate the reliance on *maṣlaḥa* to decide on new emergent cases outside of the above areas.³⁹⁷

The precedent of the leading Companions and subsequent jurists, however, were more ready to embrace *Sharīʿa* both as a set of rules and a value system in which the specific rules were seen as tangible manifestations of the overriding values or purposes of

³⁹⁵ Wahbat al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1996), v. 2, 754; Kamali, *Principles of Islamic Jurisprudence*, 273-4.

³⁹⁶ Waliy Allāh al-Dahlawī, *Hujjat Allāh al-Bāligha* (Beirut: Dār al-Maʿārif, 2004), v. 1, 296-8.

³⁹⁷ Al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī*, v. 2, 757-60.

law.³⁹⁸ Strict theories of Islamic law prevalent in the third century till the beginning of fifth century of Hijrah are basically theories whereby derivation of Islamic law were very much tied down to the literal interpretation of the texts of the Quran and the Sunna. Apart from the literal interpretation of the Quran and the Sunna, the entire methodology of the jurists of this era was based on a strict form of analogy or syllogism of the divine texts, and the acceptance of the opinion of a Companion as a source of law among the Mālikīs. By the fifth century, all the areas of law for which text are found have been developed fairly thoroughly and effectively by the jurists.³⁹⁹

The reluctance to rely upon *maṣlaḥa* as a ground for legislation was due partly to the *maqāṣid* inherent nature of existence. The *maqāṣid* of a law can only be clearly understood if the text itself declared it so. The purpose of law, however, may not necessarily be declared by a definite text but is derived from the values and principles embedded in several verses of the Quran, or from its coherence and by the substance of the hadiths that provide reinforcing interpretation of the Quran. Thus, to understand a *maqāṣid* or *maqāṣid* of a law, jurists cannot escape from engaging in a degree of speculation. The ambiguity in defining its limit (how far human justification could be used to determine

³⁹⁸ This is not saying that the classical jurists did not adopt the *maqāṣid* approach at all in deriving the Islamic law. The adoption of 'purpose oriented' among the Companions could be seen from 'Umar's decision to include horses in the types of wealth subject to zakat during his reign. On livestock, the Prophet had earlier enlisted camels, cows and sheeps as the domesticated animals that are subject to zakat. He did not mention horses even though they were also among the domesticated livestock at that time. 'Umar's rationale was that horses at his time were becoming significantly more valuable than camels. The rationale of his judgement shows that he was aware that zakat is a form of social assistance. Based on this purpose of zakat, wealth which can provide this assistance for the poor must be subject to zakat even though it was never mentioned in the Quran or the hadiths. See al-Qaraḍāwī, *Fiqh al-Zakā Dirāsa Muqārana li Ahkāmihī wa Filsafātihi fī Ḍaw'i al-Qur'ān wa al-Sunna*, v. 1, 228-9.

³⁹⁹ Nyazee stated that in the *Bidāyat al-Mujtahid* of Ibn Rushd there are only 560 verses of the Quran of which are of legal verses (*āyāt al-aḥkām*), and about 1620 legal traditions. He further maintained that the cases of *ijmā'*, *istihsan* and *maṣlaḥa mursalah* found in the book are limited and not exceeding a dozen in each case of *ibāda*, *mu'āmalah* and the criminal law. See Nyazee, *Theories of Islamic Law: the Methodology of Ijtihad*, 191-3.

law) and the fear of overemphasizing of *maslaḥa* and treating it as a priority over textual sources have refrained them from utilizing *maqāṣid* to expound and elaborate the law to solve the changing world and restricted themselves to revolve closely around the texts. The jurists are more comfortable with the sphere of fixed and definite cases and left the decisions regarding emergent and changing cases to the ruler.⁴⁰⁰

According to al-Ghazālī, there are three purposes of a law: pure devotion, rational benefit to mankind and a composite of the two. Among these three, the human benefit and advantage is the more apparent and easier to rationalize. He cautions, however, that devotion and servitude must never be overlooked on account of the more apparent benefit (namely human benefit and advantage) since the subtler of the two is the more important. Feeble minds, according to him fail to comprehend complicated things, thus leading to errors in understanding the purposes of law.⁴⁰¹

The theory itself is non-lacking except that the texts for the source of law are limited. Restricting the establishment of Islamic law to strict interpretation of the finite texts denies the dynamism of Islamic law in an ever-changing environment.⁴⁰² Situations beyond the immediate wording of the authoritative texts must be analyzed and decided based on a more holistic context where the general principles and purposes of law are also considered.

⁴⁰⁰ Nyazee believes that the restraint is due to the doctrine of Islamic law itself where the right of Allah supersedes other rights. Nyazee, *Theories of Islamic Law: the Methodology of Ijtihad*, 114-5, 201.

⁴⁰¹ He exemplifies the mistake of understanding the purpose of law with an example of allowing substitution of payment of zakat with its value. The apparent purpose of the allowance is satisfying the needs of the poor. According to al-Ghazālī, the devotional purpose, however, precedes this rationale as exemplified by the specific treatment (nisab and rate of zakat) for different types of zakatable wealth. Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī, *Ihyā' 'Ulūm al-Dīn*, (Semarang: Karya Toha Putra, n.d.), v. 1, 213.

⁴⁰² Felicitas Meta Maria Opwis, *Maslahah and the Purpose of the Law*, (Leiden: IDC Publishers, 2010), 1.

Foreseeing the limit of strict interpretations of the divine texts and the ever-changing environment that demands dynamic legal solutions, many contemporary jurists and reformists suggest the use of *maṣlaḥa* as an independent legal source. They support the principle based on the conception that Islamic law was revealed to serve, inter alia, the welfare of mankind. Hence, all matters which preserve the well being of the society are in line with the objectives of the *Shariʿa* and therefore should be pursued and legally recognised.⁴⁰³

4.1.4 Dimensions of *Maqāṣid al-Shariʿa*

As aforementioned, benefits to the public are well manifested in the preservation of the *maqāṣid* of the law. Traditional jurists classified *maqāṣid* cum *maṣlaḥa* which has not been explicitly mentioned or nullified by the Lawgiver into three levels of necessities: the essentials (*ḍarūrāt*), the complimentaries (*ḥajīyyāt*) and the luxuries (*taḥsīniyyāt*).⁴⁰⁴

The essentials are enumerated as the preservation of religion, life, offspring, intellect, and property. The preservation of these five is considered as absolute requirement to the survival of human without which they will become disoriented and the normal

⁴⁰³ Shaltūt, *al-Islām: ʿAqīda wa Sharīʿa*, 98; Opwis, “Maslahah in Contemporary Islamic Legal Theory”, *Islamic Law and Society*, 2: 2 (2005), 197-9, 202-8.

⁴⁰⁴ Al-Ghazālī, *al-Mustaṣfā min ʿIlm al-ʿUṣūl*, v. 2, 481; al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Shariʿa*, v. 4, 20-1; al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī*, v. 2, 754-6.

order of society will collapse.⁴⁰⁵ Islamic law takes affirmative and even corrective measures to defend and promote these values. If an action is considered as an essential for the preservation of any of these five elements, then the action will be valued as a must by Islamic law. The complementaries, even though non-vital to the preservation of the five elements supplement the essentials. They are needed to relieve or remove the hardship faced in realizing the five elements. The luxuries are the refinements necessary to adorn life and provide human with comfort and perfection. Actions related to a lower category must be disregarded if they conflict with the objectives of a higher level category.⁴⁰⁶

Contemporary jurists, however, found that this traditional dimension of *maqāṣid* has some limitations. First, the above *maqāṣid* were mostly concerned about an individual's need rather than for the families or societies. General and universal values of human being like justice and freedom are missing. Second, the scope of the *maqāṣid* as outlined by the traditional jurists is too general and encompasses the entire Islamic law. The *maqāṣid* for a specific chapter of *fiqh* or for a single or groups of scriptures are lacking.

And third, these *maqāṣid* also were deduced from the *fiqh* literature and not the supposedly original sources of Islamic law that are the Quran and the Sunna. As a result of the above limitations, they opened the scope of *maqāṣid* to include other essential objectives of *Sharī'a* like the establishment of peace (*iṣlāḥ*), the preservation of honour and social order, the promotion of the wellbeing and righteousness (*ṣalāḥ*) of the community, etc.⁴⁰⁷ More universal *maqāṣid* are introduced which are directly

⁴⁰⁵ Al-Ghazālī, *al-Mustaṣfā min ʿIlm al-ʿUṣūl*, v. 2, 483; Ibn ʿĀshūr, *Maqāṣid al-Sharīʿat al-Islāmiyya*, 300.

⁴⁰⁶ Kamali, *Principles of Islamic Jurisprudence*, 397-8.

⁴⁰⁷ Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿa*, v. 4, 21; Ibn ʿĀshūr, *Maqāṣid al-Sharīʿat al-Islāmiyya*, 299.

deduced from the texts, rather than from the body of *fiqh* literature.⁴⁰⁸ Scholars also have introduced new dimensions of *maqāṣid* which is based on the scope of the rulings and that expand to a wider scope of people. *Maqāṣid* for specific scope of rulings like for prayer, fasting, *muʿāmalā* and etc. are delineated.⁴⁰⁹

4.2 *Maqāṣid al-Sharīʿa* and the Investment of Zakat

4.2.1 Introduction

Zakat is one of the vital elements in Islam. It is mentioned side by side with prayer (*salā*) in numerous places in the Quran. The juxtaposition of these two duties implies that they are inseparable that the breach of one amount to the breach of another. The closely interwoven prayer and zakat exhibits the dynamism synthesis of spiritual and secular institutions in the Islamic belief and social order. The opening of *Sūrat al-Baqara* clearly testifies the significant of both in a Muslim's faith. The chapter begins, "This is the Book; in it is guidance sure, without doubt, to those who fear Allah; who believe in the Unseen, are steadfast in prayer, and spend out of what We have provided for them."⁴¹⁰

⁴⁰⁸ Auda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach*, 4-5.

⁴⁰⁹ Some examples are like ʿIzz al-Dīn ʿAbd al-ʿAzīz ibn ʿAbd al-Salām Sulamī (Beirut: Dār al-Fikr al-Muʿāsir; Damascus: Dār al-Fikr, 1995); Zahr al-Dīn ʿAbd al-Rahmān, *Maqāṣid al-Sharīʿa fī Aḥkām al-Buyūʿ*, (Selangor: IIUM Press, 2009); Rāwiyah Aḥmad ʿAbd al-Karīm Zāhhār, *al-Maqāṣid al-Sharʿiyya li al-ʿUqūbāt fī al-Islām* (Medina: Jāʿizat Nāyif ibn ʿAbd al-ʿAzīz al-Saʿūd al-ʿĀlamiyya li al-Sunnat al-Nabawiyya wa al-Dirāsāt al-Islāmiyyat al-Muʿāsira, 2005).

⁴¹⁰ Qur. 2: 2-3.

As a devotional matter, the purposes of zakat obligation and its significance are much revolved around its devotional purposes. According to al-Ghazālī, the main purpose of a devotional matter such as zakat is the trial of man through action of his submission to serve God by means of acts which (in themselves) may have no rational meaning. The requirements of devotion are fulfilled through carrying out the details which are connected with the payment of zakat as outlined in the sacred texts.⁴¹¹ Hence, the delineation of the purposes of zakat among the classical jurists very much relies upon the purposes of its obligation as mentioned in the Quran and hadith.⁴¹²

Among contemporary jurists, however, they argue that zakat is not solely a devotional matter because the payment of zakat not like prayer (*ṣalā*) implicates also the human beings. Furthermore, the injunctions relating to the disbursement of zakat are very few necessitating the examination of the underlying purposes of zakat and the possibility of engaging other legal methods of deduction like *qiyās*, *maṣlaḥa*, and etc. Thus, in evaluating any aspects of its administration, rationale and justification of its undertaking must also be considered.⁴¹³

4.2.2 Maqāṣid al-Sharī'a of Zakat

The Quran is expressive, in numerous places and a variety of contexts, of the rationale, purpose and benefit of zakat. Several verses explicitly convey these purposes. The Quran says, ""Of their wealth take alms that so thou might purify and sanctify them;

⁴¹¹ Al-Ghazālī, *Ihyā' 'Ulūm al-Dīn*, v. 1, 213.

⁴¹² See al-Ghazālī, *Ihyā' 'Ulūm al-Dīn*, v. 1, 205-31; al-Dahlawī, *Hujjat Allāh al-Bāligha*, v. 2, 69-85.

⁴¹³ Muṣṭafā Aḥmad al-Zarqā', "Jawānib min al-Zakā Taḥtāju ilā Naẓar Fiqhiy Jadīd," *Majallat Abḥath al-Iqtiṣād al-Islāmiy*, 1: 2 (1984), 110; Shaltūt, *al-Islām: 'Aqīda wa Sharī'a*, 98; Riḍā, Muḥammad Rashīd, *Tafsīr al-Mannār*, v. 1, 435.

and pray on their behalf, verily thy prayers are a source of security for them.”⁴¹⁴ Zakat is meant as a conduit for man to cleanse not only his wealth but also to purify his spiritual wellbeing. Through the act of paying a portion of his wealth to another person, zakat purifies the individual’s soul from excessive love for wealth, freeing him from the love of possessions and greed, purging the habit of miserliness and showing his gratitude for the wealth awarded to him.⁴¹⁵ According to al-Ghazālī, the main purpose of zakat is the acknowledgement of the unity of Allah and a confirmation of submission to this faith. It is an acknowledgement that whatever wealth one possesses is in reality owned by the Almighty. Mankind are charged with managing the earth and their individual property as trustees. The degree of a man’s submission to God is tested when he have to part with his beloved which includes his wealth.⁴¹⁶ The Quran on miserliness says, “And whoever is saved from his own covetousness, such are they who will be the successful.”⁴¹⁷ Anas ibn Mālīk narrated that the Prophet said, “ A man who pays zakat, entertains his guest and gives to those in trying times is one who is abstained from covetousness.”⁴¹⁸ For the recipients, receiving zakat purifies their heart from envy of the rich and fosters in them a sense of good will towards their brothers who are willing to share their wealth.⁴¹⁹ Thus, zakat is not merely a tax on the affluent but most importantly is a mechanism that fosters brotherhood and responsibility towards other mankind.

Zakat also purifies a man’s wealth by cleansing his wealth from wrongful accumulation of wealth. Payment of zakat means returning the share of the recipients which forms

⁴¹⁴ Qur. 9: 103.

⁴¹⁵ Al-Qaraḍāwī, *Fiqh al-Zakā Dirāsa Muqārana li Ahkāmīhi wa Filsifātihi fi Ḍaw’i al-Qur’ān wa al-Sunna*, v. 2, 857-78.

⁴¹⁶ Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, v. 1, 214.

⁴¹⁷ Qur. 59: 9. See also Qur. 47: 38.

⁴¹⁸ Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī Jāmi’ al-Bayān ‘an Ta’wīl Āy al-Qur’ān* (Egypt: Dār al-Ma’ārif, 1954), v. 22, 530-1.

⁴¹⁹ Al-Qaraḍāwī, *Fiqh al-Zakā Dirāsa Muqārana li Ahkāmīhi wa Filsifātihi fi Ḍaw’i al-Qur’ān wa al-Sunna*, v. 2, 867.

part of his wealth. Once his wealth is purified, this wealth is ensured by God with blessings.⁴²⁰ On receiving the blessings of God through giving his wealth to charity, the Quran says, “Know they not that Allah doth accept repentance from his votaries and receives their gifts of charity, and that Allah is verily He, the Oft-Returning, Most merciful”.⁴²¹ Allah has promised to those who spend in charity that their wealth shall be increase in manifold. The Quran says, “For those who give in charity, men and women, and loan to Allah a beautiful loan, it shall be increased manifold (to their credit), and they shall have (besides) a liberal reward”.⁴²² Zakat especially to those who are poor means an increase in income which translates into higher demand of goods and improves their health care and food intake which can promote their productivity.⁴²³ On the other hand, it motivates the owners of wealth to invest their wealth to avoid depreciation of their assets. Both of these bring vitality to the productions and demands of goods which are prerequisites for a prosperous economy.⁴²⁴

Another main purpose of zakat is to ensure the fulfilment of the rights of the rightful.⁴²⁵ The Quran says, “And in their wealth the beggar and the outcast had due share”⁴²⁶ and “And in whose wealth there is a right acknowledged. For the beggar and the destitute.”⁴²⁷ All people are equal in their right to the bounties of God. Mankind, however, has different ability to acquire and accumulate wealth as the quantum

⁴²⁰ Al-Azhari, *Jawāhir al-Iklīl*, v. 1, 118; al-Qaradāwī, *Fiqh al-Zakā Dirāsa Muqārana li Ahkāmihī wa Filsifātihi fi Daw‘i al-Qur‘ān wa al-Sunna*, v. 2, 867-71.

⁴²¹ Qur. 9: 104.

⁴²² Qur. 2: 261, 57: 18.

⁴²³ For the relationship of basic need fulfilment and economic growth, see also David Wheeler, “Basic needs Fulfilment and Economic Growth”, *Journal of Development Economics*, 7: 4 (1980), 435-51.

⁴²⁴ M. Sadeq, “Ethico-Economic Institution of Zakah: An Instrument of Self-Reliance and Sustainable Grassroot Development,” *Humanomics*, 12: 2 (1996), 52-3.

⁴²⁵ Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, v. 1, 213; al-Sarakhsī, *al-Mabsūṭ*, v. 2, 8-9.

⁴²⁶ Qur. 51: 19.

⁴²⁷ Qur. 70: 24-5.

granted to each may differ. Some people accumulate wealth easily either through heritage or their own efforts but some struggle even to satisfy their basic needs.

Zakat is a mechanism that mobilizes this imbalance of wealth among Muslims to ensure the fulfilment of the Muslim's right to comfortably live in the society. Even for the payers of zakat, their rights have also been fulfilled with the requirement of the *niṣāb* of zakat. The requirement of minimum of wealth takes into account the payer's need and acts as their safety cushion. Zakat ensures that wealth is redistributed without hurting those who have accumulated wealth.

This purpose is reiterated by another verse in the Quran that says, "What Allah has bestowed on His Messenger (and taken away) from the people of the townships, - belongs to Allah-, to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you..."⁴²⁸ According to al-Ṭabarī, the verse points that those who have wealth should not circulate wealth among them only. Apart from spending for their needs, the wealthy must also spend it for the purpose of assisting others.⁴²⁹ Hence, hoarding and unlimited accumulation of wealth is condemned because it keeps productive assets from being invested and grown in the community.⁴³⁰

The Quran and the Sunna have elucidated the rights of specific segment of the society upon zakat and the purposes behind this designation.⁴³¹ For the poor and needy, zakat ensures that not only their basic needs are fulfilled but zakat is an economic source that

⁴²⁸ Qur. 59: 7.

⁴²⁹ Al-Ṭabarī, Tafsīr al-Ṭabarī Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān, v. 22, 520.

⁴³⁰ Qur. 9: 34-5.

⁴³¹ The Quran says, "The alms (zakat) are only for the poor (*fuqārā'*) and the needy (*masākīn*), and those who collect them (*āmilūn*), and those whose hearts are to be reconciled (*mu'allafat qulūbuhum*), and to free the captives (*riqāb*) and the debtors (*ghārimūn*), and for the cause of Allah (*fī sabīl li Allāh*), and (for) the wayfarer (*ibn al-sabīl*); a duty imposed by Allah. Allah is Knower, Wise." Qur. 9: 60.

may assist them getting out of poverty.⁴³² A hadith narrated by Muslim where the Prophet allows the giving of zakat till a poor is enriched clearly implies this enrichment purpose of zakat.⁴³³ For the bonded slaves, zakat is to help them pay the debt that bonded them to their masters.⁴³⁴ Similarly, zakat is a financial source of the debtors to settle their debt. According to Ibn Taymiyya, zakat is also meant to assist Islam and empower it. This is evidenced by the allowance to distribute zakat to those who are wealthy but whose position and stature may attract newly converts to Islam.⁴³⁵ This is also the purpose of designating a portion of zakat to *fī sabīl li Allāh*.⁴³⁶

Among contemporary Muslim economists, zakat occupies a central place in Islamic economics as a source of Muslim economic development. The distinct attributes of zakat with its fixed rates and *niṣāb* lend an element of stability to public revenues which is particularly useful in maintaining public expenditure. Its connotation as a religious obligation further ensures the continuous flow of this public resource.⁴³⁷

Zakat is considered as a mechanism to uplift and develop the economy of Muslims especially those who are poor and deprived of their basic needs. In accordance to the revealed purpose of satisfying the needy above, contemporary scholars suggest the review of the mechanics of zakat distribution to ensure that not only the short-term

⁴³² Al-Qardawi, *Economic Security in Islam*, 66-7; Abu N.M. Wahid, "The Economic Implications of Zakah." *Contemporary Review*, 248: 1440 (Jan. 1986), 12-3.

⁴³³ The Prophet when asked by Qubayṣa for zakat to repay the amount of money that he had spent to settle a dispute, said, "Asking for zakat is not allowed except for three persons. A person who lent his money to settle a dispute ..., a person who is in need and can be given zakat till he is enriched ..." See al-Naysābūrī, *Ṣaḥīḥ Muslim*, v. 2, Book of Zakat, 423.

⁴³⁴ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 139; al-Jazīrī, *al-Madhāhib al-Arbaʿa*, v. 1, 621.

⁴³⁵ Ibn Taymiyya, *Fiqh al-Zakā wa al-Ṣiyām*, 39.

⁴³⁶ Muḥammad Rashīd Riḍā, *Tafsīr al-Mannār* (Cairo: Dār al-Mannār, 1947), v. 10, 579, 584-5; Jād al-Ḥaq ʿAlī Jād al-Ḥaq, *Buḥūth wa Fatawā Islāmiyya fī Qaḍāyā Muʿāṣira* (Cairo: Dār al-Ḥadīth, 2005), v. 1, 389-93.

⁴³⁷ Faridi, "Capital Formation, Economic Growth and Public Budgeting In An Islamic Framework," 119-27.

need is fulfilled but also their long-term need. Typical payment of zakat is financial assistance to cover the recipients' immediate basic needs like for food, drink and shelter. Instead of only providing the poor with a subsistence level of income monthly or yearly, this possible major source of funds should also be channelled to satisfy the long-term need of the poor recipients that is to alleviate them for their poverty. This enrichment purpose can be fulfilled via investment of zakat. ⁴³⁸

⁴³⁸ The methods to achieve this need via investment of zakat have been discussed in details in Section 2.2.

4.3 Conclusion

The above discussion reveals that *maqāṣid al-Sharī'a* is a powerful method in evaluating the legality and justifications of new cases which rulings have not been directly decided by the sacred texts. Traditional jurists, however, are found to refrain much from engaging themselves outside the fixed sphere of Islamic law given the nature of *maqāṣid al-Sharī'a* which may not be declared by a definite text but has to be derived from the values and principles embedded in several verses of the Quran.

With the complexity of life and the emergent of new cases among Muslims that warrant legal decisions regarding their compliancy with Islamic law, many modern jurists suggest that the cases should be reviewed based on the objectives of law and are not confined to strict interpretations of the divine texts alone. A similar suggestion is also extended to the investment of zakat which is deemed a necessary method of zakat distribution that could ensure a more effective fulfilment of those who are in need particularly in ensuring the alleviation of poverty among the poor.

In pursuing the economic purposes of zakat, however, one should always remind that zakat is a devotional ritual in Islam. Principles of zakat as outlined in the Quran and the Sunna should never be overlooked by the apparent rational of zakat, for the upmost purpose of zakat remains as a servitude to God. Thus, investment of zakat should be evaluated not only by its economic purposes and benefits to Muslims but must be assessed also with an awareness of the importance of its devotional purposes.

In the following two chapters, the study examines the legal issues raised by the contemporary jurists regarding zakat investment. In each of the issues discussed, the study analyzes the fundamental principles of zakat payment and distribution which are

outlined by the jurists to fulfill the above divine purposes of zakat particularly to safeguard the rights of both the payers and the recipients of zakat.

Chapter Five

Islamic Legal Issues in the Management of Zakat Investment

5.0 Introduction

As mentioned in the previous chapters, investment of zakat has not received special attention from the classical jurists as they were more concerned about the accomplishment of the payment of zakat as a ritual obligation than its economic impact on Muslim society as a whole and the poor in particular. Modern Muslim economists, however, seeing the importance of zakat investment particularly in assisting the poor to generate their income and to ensure the future flow of zakat funds or its benefits, suggest that investment of zakat should be considered as part of the zakat distribution process. Furthermore, the benefits of zakat investment are manifestations of the main purposes of zakat which are to satisfy the need of the rightful and to enrich the poor.

Given the lack of direct ruling among the classical jurists on investment of zakat, the suggestion has led to serious discussion among modern jurists about its validity. These were followed by the issuance of *fatwās* on investment of zakat by well known Muslim jurists and Islamic organizations. In their discussions on zakat investment and its rulings, many Islamic legal issues pertaining to investment of zakat, particularly those concerned with the principles of zakat distribution are raised and examined.

This chapter is part of the two chapters discussing Islamic legal issues on investment of zakat as raised by modern Muslim jurists. The selection of these legal issues is made purely based on the *fatwās* issued on zakat investment as discussed in the previous chapter, the emphasis given by works on zakat investment,⁴³⁹ and their relevance to the contemporary application of zakat investment in Malaysia. The issues are important for any study on zakat investment as they are the fundamental principles of zakat payment and distribution which were outlined to safeguard the rights of both the payers and the recipients of zakat. In assessing the validity of zakat investments undertaken by the zakat institutions from the Islamic legal point of view, it is thus pertinent to investigate these issues thoroughly.

In analyzing the issues, the study mainly refers to the primary sources of *fiqh*, the Quran, the Sunna and the works of some prominent medieval jurists, particularly from the four main Sunni schools, for further clarification of the core principles underlying zakat, especially in its distribution. Some works by modern scholars are also referred to, particularly to understand more current, relevant and practical Islamic legal views of

⁴³⁹ Muṭamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 363-421; discussion papers on zakat investment presented at the *Abḥath wa Aʿmāl al-Nadwat al-Thālitha Li Qaḍāyā al-Zakāt al-Muʿāṣira* like “Istithmār Amwāl al-Zakāt” by ʿIsā Zaki Shaqrā, “Al-Tamlīk wa al-Maṣlaḥa Fihi wa Natāʾijuhu” and “Istithmār Amwāl al-Zakāt”, both by Muḥammad ʿUthmān Syubayr. Other works are Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsāt Iqtisādiyyat Fiqhiyyat Tahliyyat Muqārana*; al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fī Hukmiha*.

the issues. The Malaysian perspectives regarding the issues are also highlighted to provide a better understanding of the operations of zakat investment in the country.

This chapter will analyze specifically the legal issues in the management of zakat investment while the next chapter will focus on the issues pertaining to the financial aspects of investment of zakat. There are four legal issues discussed in the chapter. There are the issues of delaying the payment of zakat to the recipients of zakat, withholding fully or partly transfer of ownership of zakat to the recipients, involvement of selected recipients only in the investment activities, and sharing the benefits of investment with non-recipients of zakat.

The first two issues of delaying payment and withholding the transfer of ownership of zakat to the recipients are considered by Muslim jurists as the main reasons that impede the permission to invest zakat. This is because an investment of zakat fund will necessitate a delay in the payment of zakat to the recipients. A delay in the payment implies that the eligible owner has yet to fulfil his obligation, since the deserving recipients have not received the payment. The delay also leads to the suspension of the transfer of ownership of the payment to the recipients, which is considered a requirement in the payment of zakat by the majority of jurists. The majority of jurists also require that ownership is transferred fully to individual recipients, which raises the question whether investment of zakat that gives partial and beneficiary ownerships to the recipients will nullify zakat payment or otherwise.

The third issue concerns selective participation among recipients of zakat in investment projects. One of the main objectives of zakat investment is to tackle poverty by providing opportunities for employment and continuous incomes for the poor. Given this objective, it is more likely that the targets of investment are the poor and the needy, thus the importance to examine the juristic outlook over selective participation by some of the groups of recipients only.

The final issue which is the issue of sharing the benefits of investment with non-recipients of zakat arises in particular when zakat is invested in social projects like hospitals, schools, and rehabilitation centres, etc. These kinds of projects will undoubtedly attract other users aside from the deserving recipients thus risking zakat to be benefited by other than the rightful recipients of zakat.

Preceding the discussion on these issues, the study looks at the possible managers of zakat investment, their appointment and remuneration from the *Sharī'a* view. This is to examine the religious merits and drawbacks of each type of manager and also to recognize possible conduits and opportunities in undertaking zakat investment.

It should be noted that the entire legal outlooks on zakat investment above will become the referred guidelines for the study in determining whether the management of zakat investment in Malaysia conforms to the Islamic principles of zakat which will be discussed in later chapters.

5.1 Managers of Zakat Investment

In a full cycle of zakat payment there are three parties involved: the owner of the zakatable wealth, the recipients and the state or its representative who acts as an intermediary between the two. Given their access to zakat, all three parties have the opportunity to manage investments which are financed by zakat.

From the juristic point of view, the possibility of the owner of zakatable wealth managing zakat investment rests upon whether an investment by the owner is an accepted excuse for delay in the payment of zakat. The reason for this is that the majority of jurists disallowed the owner to defer the payment once zakat became an

obligation on him. An owner is only allowed to delay his payment of zakat only when he is waiting for the collector of zakat or finding a better recipient among his relatives.⁴⁴⁰ Shubayr, commenting on whether an owner of zakat is allowed to invest zakat or not, maintains that delay due to investment of zakat cannot be associated to any of the above cases. Thus, permission for the owner to invest zakat which is yet to be transferred to the recipients or the state is very unlikely to be approved by Islamic law.⁴⁴¹

In the Malaysian context, investment of zakat by the owner is rather unlikely to happen because the states impose the owners to pay zakat immediately to the states upon obligation. Authority to manage zakat is also given solely to the states' representatives, the Majlis Agama Islam Negeri (MAINs), which deny any rights for the owners to invest zakat that they are obliged to pay.⁴⁴²

On the other hand, for the recipients of zakat, once zakat is received by them, they have absolute freedom to undertake any investment with the zakat. This is so because the ownership of zakat has already been fully transferred to them from the original owner of zakat. Once they received the ownership of zakat, they will have full right to dispose of the zakat in any way that they desire.⁴⁴³ The only constraint for the recipients to invest zakat would be the amount of zakat that they received, whether there is a surplus for investment after fulfilling their immediate needs or they are willing to forego these needs for the sake of their future benefits. The possibility for them to undertake and succeed in any investment activity would also depend on their ability to plan and operate the investment.

⁴⁴⁰ A more detailed discussion on this will follow in 5.2.

⁴⁴¹ Shubayr, "Istithmār Amwāl al-Zakā Ru'ya Fiqhiyya Mu'āṣira", v. 2, 511.

⁴⁴² Sec. 81 and 86, Administration of Islamic Law Enactment (Selangor) 2003; Sec. 7(2)(d), Administration of Islamic Law Act (Federal Territories) 1993.

⁴⁴³ Al-Bahūṭī, *Kashshāf al-Qinā'*, v. 2, 285.

5.1.1 State as Manager of Zakat Investment

Investment of zakat by the state or its representative can occur when zakat is in transition between the owner of zakatable wealth and the recipients. As the intermediary between the two parties, the possibility of the state or its representative acting as the manager of zakat investment depends on the state authority to collect zakat and the extent of control that the state has in deciding how to dispose of it.

In general, jurists are in agreement that the state has the right to collect and receive zakat on apparent wealth from eligible owners based on the practices of the Prophet and his Companions.⁴⁴⁴ In the event that the state insists that zakat on apparent wealth must be paid to them and the state shows credibility in distributing zakat according to Islamic law, the owners, according to the Mālikīs and the Shāfi'īs, must rightfully obey.⁴⁴⁵ According to al-Mawdūdī, the state is given the right to zakat on apparent wealth because of the ease in calculating and enumerating it without having to seek the information through certain ways.⁴⁴⁶ For non-apparent wealth, the Mālikīs insist that it must also be paid to the state if it is publicly known to distribute zakat according to

⁴⁴⁴ Ibn Qudāma, *al-Mughnī*, v. 2, 507; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 675. Apparent wealth (*al-amwāl al-ẓāhira*) is the kind of wealth that an owner cannot hide and possible for the government to enumerate like agricultural produce, fruits and livestock. The non-apparent wealth (*al-amwāl al-bāṭina*) is wealth that is possible to be evaded or hidden and may only be known through certain ways, like through paying for information. Gold, silver, money and whatever under its term, and tradable goods are considered as non-apparent wealth. The majority of jurists divide them as above except the Ḥanafīs who consider tradable goods as non-apparent wealth when it is in its place and apparent when it is assessed by a tithe collector or has been circulated for trade. See Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 244; al-Maṣrī, *Buḥūth fī al-Zakā* (Damascus: Dār al-Maktabī, 2000), 208; al-Māwardī, *al-Aḥkām al-Ṣulṭāniyya*, 113; Abū ʿUbayd, *Kitāb al-Amwāl*, 502, 515, 516-9.

⁴⁴⁵ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 61-2; Sahnūn, *al-Mudawwana*, v. 1, 335.

⁴⁴⁶ Al-Mawdūdī, *Fatāwā al-Zakat*, 35.

Islamic law. Other jurists encourage the owners to pay zakat directly to the recipients and accord the state only with supervisory right in ensuring that owners of zakatable wealth fulfil their duties in paying zakat. The state can only intervene and force the owners to pay when they refuse or neglect to fulfil their duties.⁴⁴⁷

According to al-Qaraḍāwī, modern scholars like Khallāf, al-Ḥasan and Abū Zahra insist that all types of zakat are to be paid to the ruler, given the widespread default of zakat payment for both types of zakat and the current regulations which no longer made non-apparent wealth obscure. Al-Qaraḍāwī, commenting on the disagreement whether the state has the right to collect zakat on apparent wealth only or on both types of wealth, points out that a political decision made by the state will converge the disputes. If the state decides that owners of non-apparent wealth must pay their zakat to the state then they must obey this ruling. Still, he suggests that owners of zakatable wealth are allowed to pay a fraction of zakat directly to the recipients. The reason is to maintain the spirit of compassion and kinship between the owners and the recipients, especially when the recipients are their own relatives and neighbours.⁴⁴⁸

On the authority to distribute zakat, jurists accord the state several exclusive rights. Mālik, Ibn Ḥanbal and the Ḥanafīs hold that the state is allowed to decide which groups of recipients will receive zakat. The state can spend the entire zakat on a group or selected groups of recipients only, if the need arises. Similarly, the state has the right to dictate the number of recipients in each group and the amount that can be allocated to each of the groups and each of the recipients.⁴⁴⁹ The state can also mobilize zakat at its discretion between areas and can decide to postpone the distribution of zakat in

⁴⁴⁷ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 246; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 63; Ibn Qudāma, *al-Mughnī*, v. 2, 507-9.

⁴⁴⁸ Al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 765-75.

⁴⁴⁹ Abū ʿUbayd, *al-Amwāl*, v. 4, 578; Sahnūn, *al-Mudawwana*, v. 1, 342; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320; al-Sarakhsī, *al-Mabsūṭ*, v. 2, 10-1.

order to find better recipients or for other more demanding purposes. According to the Ḥanafis and some scholars in Ḥanbalis like Abū Yaʿlā al-Farrāʾ and Ḥasan al-Bannā, zakat can be paid to the recipients outside the area of collection if they are proven to need it more than the local recipients.⁴⁵⁰ The state, according to Ibn Ḥanbal as cited by al-Maqdisī, is allowed to delay payment of zakat to the recipients when there are public needs (*maṣlaḥa*) such as in times of catastrophe.⁴⁵¹ Thus comparing these three parties which have access to zakat, the state is undoubtedly the most viable manager of zakat investment for its authority to collect and distribute zakat.

In accordance with the juristic views above, in a country like Malaysia, several observations were noted which justified the obligations of zakat payment to the states' zakat institutions. These include structured zakat laws and administration that essentially guarantee that zakat will be disbursed according to the Islamic law. Each state has its own Islamic law administrative laws that regulate the collection and distribution of zakat. Under these laws, a body known as the Majlis Agama Islam Negeri (State Islamic Religious Council) or the MAINs was established and appointed as the sole collector and administrator of zakat with the authority to determine the policies regarding its collection and distribution. Furthermore, modern financial systems and regulations in the country have made possible the enumeration of most non-apparent wealth like tradable goods, savings and income like salaries, fees, etc.

Still, however, the above authority accorded to the state comes with the stipulation that the state is able to disburse the zakat revenue accordingly to the rightful recipients.⁴⁵² Al-Shāfiʿī, for example, insists that the owner of wealth pays his zakat directly when he

⁴⁵⁰ Ibn al-Humām, *Sharḥ Faṭḥ al-Qadīr*, v. 2, 284; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 679.

⁴⁵¹ Al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 669. See Abū ʿUbayd, *Kitāb al-Amwāl*, 462

⁴⁵² Al-Kufrāwī, ʿAuf Maḥmūd, *Siyāsāt al-Infāq al-ʿĀm fī al-Islām wa fī al-Fikr al-Māliyy al-Ḥadīth “Dirāsāt Muqārana”* (Iskandariah: Muʾassasat Shabāb al-Jāmiʿa, 1989), 312-3.

thinks the ruler will not manage it fairly.⁴⁵³ According to Ibn Qudāma, a fair ruler only is not enough because eventually, the distribution will not be conducted by the ruler alone but his representatives.⁴⁵⁴ Hence, the collection and distribution of zakat among the jurists are not an exclusive right of the state. If state is unable to fairly manage zakat and ensure that it will be received rightfully by the recipients then the owners of wealth are encouraged to pay directly to the recipients.

5.1.2 Appointment and Remuneration of *ʿĀmil* of Zakat Investment

As managers of zakat, the state has the authority to appoint the administrators (*ʿāmilūn*)⁴⁵⁵ of zakat and to decide their remuneration.⁴⁵⁶ Al-Nawāwī says, “If one *ʿāmil* is found not enough to perform the task of collecting and recording the zakat and so forth, the ruler may appoint more *ʿāmilūn* according to need.”⁴⁵⁷ In general, jurists agree that the *ʿāmilūn* must be someone trustworthy, Muslim and have some knowledge about the laws of zakat. There is, however, a view among the Ḥanafis which allows the appointment of a non-Muslim as an *ʿāmil*. They argue that since it is a paid job, anyone (not necessarily a Muslim) who is trustworthy, rational, above the age of consent and able to fulfil the task can be hired as an *ʿāmil*.⁴⁵⁸

⁴⁵³ Ibn Qudāma, *al-Mughnī*, v. 2, 507-9.

⁴⁵⁴ Ibn Qudāma, *al-Mughnī*, v. 2, 507-9.

⁴⁵⁵ *ʿĀmilūn* or its singular form *ʿāmil* is an Arabic word referring to those involved in the administration of zakat. More explanation on this term will follow later in the chapter.

⁴⁵⁶ Al-Sarakhsī, *al-Mabsūṭ*, v. 2, 9; Ibn Qudama, *al-Mughnī*, v. 2, 517-8.

⁴⁵⁷ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 175.

⁴⁵⁸ Al-Māwardī, *al-Aḥkām al-Sulṭāniyya*, 113; al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 294-5.

The appointed officials should be chosen or appointed from among Muslims well known to the Muslim community for their piety and integrity. They must be equipped with modern management tools and techniques besides the knowledge of Islamic law particularly that are relevant to the management of zakat. An administrator of zakat for examples needs to be fully informed about the prevailing conditions of recipients and the amount of assistance provided to substantiate the lawfulness of any claim to zakat assistance with the ultimate aim of ensuring that zakat is channeled to the deserving recipients.⁴⁵⁹

In deciding whether the officers responsible with works related to zakat deserved to be paid from the share of the *ʿāmilūn* out of the zakat fund or from other resources, the jurists looked at the relative importance of the task in accomplishing the collection and distribution of zakat. As such, jobs like calculating and measuring zakat out of the zakatable wealth according to the Shāfiʿīs must be paid by the owner because the services were provided for them. Jobs with minimal contribution to the overall process of collection and distribution such as drivers, store keepers and guards, according to the Mālikī jurists and some of the Shāfiʿīs, have to be paid from the *bayt al-māl*⁴⁶⁰ instead of the zakat fund.⁴⁶¹ The jurists also looked at the officers' overall commitment towards the process of collection and distribution and whether they were paid from other public resources. The rulers or officers that were involved in the general administration of zakat, according to al-Nawawī, and Ibn Qudāma, cannot receive payment from the

⁴⁵⁹ Zayas, *The Law and Institution of Zakāt*, 311, 343-9; Abdul Rahim Abdul Rahman. "Menangani Cabaran Semasa Institusi Zakat di Malaysia" in *Isu-isu Kontemporari Zakat di Malaysia*, edited by Abdul Halim Mohd Noor (Malacca: Institut Kajian Zakat Malaysia, 2005), 132-3.

⁴⁶⁰ *Bayt al-māl* refers to the treasury in an Islamic state.

⁴⁶¹ Al-Azhari, *Jawāhir al-Iklīl*, v. 1, 139; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 175-6.

zakat fund because their commitment was not limited to zakat only and, furthermore, they were rewarded from other sources like the *bayt al-māl*.⁴⁶²

The amount to be paid according to the Shāfi'īs depended on the amount of efforts and the responsibility carried by the officers in managing zakat.⁴⁶³ In the event that the total amount paid exceeded the total zakat collected, jurists like the Shāfi'īs and Ibn Qudāma insist that the balance was replenished from other sources of *bayt al-māl* besides utilizing unused balances from other groups of recipients. And in cases where the *ʿāmil* is a poor person, and his *ʿāmil*'s pay does not cover his needs, then the balance can be paid from the *fuqarā'*'s portion.⁴⁶⁴

Based on the views of the jurists above, it can be concluded that the state has the authority to appoint the officers who manage zakat and decide the remuneration of these officers. If the officers who are responsible for investment of zakat are proven important or necessary to the overall process of the collection and distribution of zakat, then the state can also pay their remuneration from the zakat fund. At the same time, the state also has the choice to pay for the officers in charge of zakat investment from other sources than zakat.

The word *ʿāmil* at the zakat institutions in Malaysia refers to any individual or organization who is directly involved in matters relating to the management of zakat, including its collection, distribution, administration, financial management and so on.⁴⁶⁵ Most often there are two types of *ʿāmilūn* at the MAINs; those personnel working as administrators of zakat and those appointed for the sole purposes of collecting zakat.

⁴⁶² Al-Nawawī, *al-Majmūʿ*, v. 6, 168-9; Ibn Qudāma, *al-Mughnī*, v. 2, 518.

⁴⁶³ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 189.

⁴⁶⁴ Al-Shīrāzī, *al-Muhadhdhab*, v. 1, 313; al-Sarakhsī, *al-Mabsūṭ*, v. 2, 9; al-Bahūfī, *Kashshāf al-Qināʾ*, v. 2, 276, 277; Ibn Qudāma, *al-Mughnī*, v. 2, 518.

⁴⁶⁵ http://www.e-zakat.com.my/baru/agihan/asnaf_layak.asp; <http://www.maiwp.gov.my>.

At the Majlis Agama Islam Selangor (MAIS), for example, the *‘āmilūn* include the personnel at the Lembaga Zakat Selangor, the MAIS’s subsidiary responsible for the administration of zakat in the state of Selangor and the *‘āmilūn* appointed for the purpose of collecting *zakāt al-fiṭr* and ‘Deputy Amil’ known also as Collection Agents which are banks and post offices that are appointed to collect zakat on wealth.⁴⁶⁶ Since all of those in charge in the administration of zakat are considered as the *‘āmilūn*, the personnel who are in charge of zakat investment at these institutions are also treated as part and parcel of the zakat management team.

The personnel in charge of zakat at these MAINs, as with any of its other officers, must be appointed by the Sultan, who is the ruler of the state, or his representatives, in this case, the MAINs. Their remuneration varies from state to state, depending on the scope of their work and also the different organizational set up for the administration of zakat at each state. For those states where administration of zakat is undertaken by the MAINs and not a separate entity, the administration of Islamic law enactments are very clear that the salaries and allowances of all the MAINs’ servants and fees and allowances payable for the offices or member of the MAINs in respect of his services as such, shall be paid out of their Baitulmal’s property and assets.⁴⁶⁷

For those entities that are in charge of zakat only and have a separate organizational structure from the MAIN, like the Lembaga Zakat Selangor (LZS) and Pusat Pungutan Zakat Wilayah Persekutuan, remuneration is paid from the zakat revenue. The remuneration for the LZS’s personnel is based on their education, position, and

⁴⁶⁶ Hairullfazli Mohammad Som, “Amil dalam Institusi Zakat Kontemporari: Kajian di Lembaga Zakat Selangor (LZS)” (M.A. diss., University of Malaya, 2009), 82-7.

⁴⁶⁷ Baitulmal is a fund established at these MAINs and consist of all money and property, movable or immovable, accrued under the provisions provided by the states’ Islamic law administrative enactments or contributed by any person to the fund. See Sec. 70, Administration of Islamic Law Act (Federal Territories) 1993 and Sec. 81 (2) and 83, Administration of Islamic Law Enactment (Selangor) 2003.

experience and not according to the grade and scheme of other MAIS subsidiaries. On average, about 12.9 percent of zakat distributed between 2004 and 2007 was allocated to LZS under the allocation for the group of *‘āmilūn*.⁴⁶⁸ The *‘āmilūn* appointed to collect *zakāt al-fiṭr* will receive one eighth of their collection, and the Collection Agents are paid five percent of the *‘āmilūn*'s portion received by the LZS.⁴⁶⁹

5.2 Immediacy and Delay in the Payment of Zakat

One of the main Sharī‘a issues that determines the permissibility of zakat investment is the ability to delay the distribution of the zakat paid. The purpose of zakat is to transfer the rights of the zakat to the recipients from the owners of zakat. An owner who is obliged to pay zakat, and the zakat institutions that are responsible in distributing the zakat, will be considered fully observing their obligations only once the payment is received by the deserving recipients.⁴⁷⁰ For most types of investment of zakat to take place, however, the amount collected is invested and withheld from being distributed to the recipients by the zakat institutions.⁴⁷¹ The delay is pertinent because the investment requires time that may span more than a year to realize its purposes, thus

⁴⁶⁸ MAIS, *Asnaf*, various issues. Asides from the officers at the LZS, the *‘āmilūn* also include individuals appointed by LZS to collect *zakāt al-fiṭr* (called *penolong-penolong amil*) which are remunerated based on the amount of collection made. Their compensation is paid from the allocation for the *‘āmilūn* from the zakat fund. See http://www.e-fatwa.gov.my/mufti/fatwa_warta_hujah_view.asp?KeyIDv=1079.

⁴⁶⁹ Hairullfazli, “Amil Dalam Institusi Zakat Kontemporari: Kajian di Lembaga Zakat Selangor (LZS)”, 82-7.

⁴⁷⁰ It was stated in *al-Mughnī* for example, “*al-zakāt lā yamlikuhā al-faqīr illā biqabḍihā*” (zakat is not properly transferred to the *faqīr* unless it becomes their possession). See Ibn Qudāma, *al-Mughnī*, v. 2, 543. According to the Hanafis, payment by owner is considered accomplished if it is lost when it is with the collector for the collector is a trustee of the recipients.

⁴⁷¹ The issue of delay does not arise in investments of zakat which are undertaken by the recipients or sourced from zakat already paid to them and with their consent.

keeping back the ownership of any zakat asset used for investment from being transferred immediately to the recipients.

This section will examine the principle of immediate payment of zakat as outlined by the Quran and the Sunna as well as by the classical jurists. Given that delay in the payment of zakat cannot be avoided in most types of zakat investment, the focus of the study is to examine the reasons why the classical jurists insist on an immediate payment and why in some instances a delay is permitted. The study will also examine their views regarding the consequence of delaying the payment on the owners of zakat and the zakat institutions, in order to understand the responsibility that the zakat institutions will bear when they decide to invest zakat.

5.2.1 Definition of Immediacy and Delay

In general, the majority of jurists compel immediate payment of zakat, and exceptions can only be found among the Ḥanafī jurists.⁴⁷² The required immediacy entails an immediate and complete⁴⁷³ payment by an owner of zakatable wealth or the ruler once the requirements for paying zakat are fulfilled. There are also jurists like the Mālikīs and Ibn Qudāma who extend the period of payment until the arrival of the next *ḥawl* and only disallow a delay beyond this point of time.⁴⁷⁴ Meanwhile, those who permit

⁴⁷² According to al-Jaṣṣās and ʿAbdallāh al-Thaljī, the majority of Ḥanafī jurists maintain that delay in the payment of zakat is allowed. See al-Kāsānī, *Badāʾiʿ al-Ṣanaʾiʿ*, v. 2, 373.

⁴⁷³ According to Imam Aḥmad ibn Ḥanbal, payment of zakat in instalments after its due was not allowed and considered as a delay in payment. Similarly, waiting for the *ḥawl* of other wealth to be completed, for example to sum and pay them together. Al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 669.

⁴⁷⁴ Ibn Qudāma, *al-Mughnī*, v. 2, 539; 541; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 60; al-Kāsānī, *Badāʾiʿ al-Ṣanaʾiʿ*, v. 2, 374; See al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, v. 2, 363.

delay, allow payment of zakat at any time in the future from the arrival of the *ḥawl*, until just before the owner's death.⁴⁷⁵

The reason for their disagreement is the absolute command (*al-amr al-muṭlaq*) found in the verses that say, "...And they must render the dues that are proper on the day that the harvest is gathered ..." ⁴⁷⁶ and "On the wealth take alms ..." ⁴⁷⁷. Even though the absolute command in the verses does not necessarily require an act of immediate payment since it neither determines the time or place of payment, those who insist on immediate payment argue that other factual evidence (*qarīna*) found in other evidences (*naṣṣ*), have implicitly indicated the obligation of immediacy. Among the factual evidence noted are the urgency of the need of the poor for their lack of basic needs and their probable loss of benefit due to a payer's death, loss of wealth or the payer's possible inability to pay in the future.⁴⁷⁸ Delay in payment will also create a conflict of payments since zakat is a repetitious obligation (*ʿibāda*) like prayer and fasting, where delay means crossing over to the next payment.⁴⁷⁹ By contrast, the latter group maintains that the absolute command in the verses is simply a command of obligation and does not conclude immediacy or delay.⁴⁸⁰

It is worth noting that the insistence on immediate payment of zakat by the owners will also explicitly include the state when it became a mediator between the owners and the recipients. There are not many instances found among the classical jurists where they treat the state's delay in the distribution of zakat separately from the owner's delay.

⁴⁷⁵ The period allowed before the owner's death is a time which is adequate to perform the payment. Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 60; Ibn al-Humām, *Sharḥ Faḥ al-Qadīr*, v. 2, 155-6; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 668.

⁴⁷⁶ Qur. 6: 141.

⁴⁷⁷ Qur. 9: 103.

⁴⁷⁸ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 191-2; Shubayr, "Istithmār Amwāl al-Zakat", 26.

⁴⁷⁹ Ibn Qudāma, *al-Mughnī*, v. 2, 539-41.

⁴⁸⁰ Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, v. 2, 374; Ibn al-Humām, *Sharḥ Faḥ al-Qadīr*, v. 2, 155-6.

Perhaps a good explanation for this is the treatment of distribution as part of the process of the payment of zakat.

5.2.2 Ability to Pay

As noted above, for the majority of jurists, the time of obligation to pay zakat starts once all of the requirements to pay zakat were fulfilled. These requirements are basically the same⁴⁸¹ among jurists except that the Mālikīs and the Shāfi'īs also add a requirement that the payer must be capable to pay zakat. This ability to pay depends on the availability of wealth which the payer will use to pay zakat, the arrival of the collector and also the existence of the designated recipients.⁴⁸² In the event that the zakatable wealth is not with the payer, for example, he is not obliged to pay from his other wealth.⁴⁸³ The requirement that there exists a person to pay to, will be fulfilled by the existence of the recipients (both for the owner and ruler), the ruler or his representative (for the owner). The Shāfi'īs even allow the payer to settle other important matters like returning a deposit under his safe-keeping (*wadī'a*) first before fulfilling the payment.⁴⁸⁴

Ibn Qudāma who insists that an ability to pay is not a requirement, quotes a hadith to support his opinion which states that zakat on wealth must be paid once its *ḥawl* is completed. He adds that zakat is an *ʿibāda* and like prayer and fasting, the ability to

⁴⁸¹ The requirements are basically the completeness of *ḥawl* and *niṣāb*. See al-Sarakhsī, *al-Mabsūṭ*, v. 2, 174; Ibn Qudāma, *al-Mughnī*, v. 2, 539-42; al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 341.

⁴⁸² Al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 341; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 122; al-Bahūtī, *Kashshāf al-Qināʿ*, v. 2, 255; al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 464.

⁴⁸³ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 83-4.

⁴⁸⁴ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 84-5; al-Shīrazī, *al-Muhadhdhab*, v. 1, 261; al-Ramī, *Nihāyat al-Muḥtāj*, v. 3, 135.

perform (like a sleeping person for praying and a sick person for fasting) is never a prerequisite.⁴⁸⁵

5.2.3 Permitted Delays

Jurists, however, still allow some room for delay given circumstances that may benefit either the payer or the designated recipients, where the benefit may vary from lessening a hardship to accommodation of payment. For the Shāfiʿī and the Ḥanbalī jurists, a delay will be possible if the payer is afraid of a hardship that might befall him or his wealth if he pays immediately. This is based on a hadith that disallows harm and detriment. Abū ʿUbayd reports that ʿUmar delayed the distribution of zakat on livestock where he brought them to a fertile land and only disbursed them a year later.⁴⁸⁶

Delay is also allowable for other reasons like waiting for those who are needier, provided that the recipients' need has not amplified.⁴⁸⁷ According to Abū ʿUbayd, Ibn Ḥanbal allows the state and distributor to delay payment when there are public needs (*maṣlaḥa*) such as in times of catastrophe.⁴⁸⁸ For Ibn Qudāma, delay is permitted if the payer wants to distribute to worthier relatives or those in more need, given that the amount is small. He also quotes Abū Ḥanīfa's view that payment may be postponed if there is no urgency in immediate payment because the command for payment is

⁴⁸⁵ Ibn Qudāma, *al-Mughnī*, v. 2, 539. The hadith was narrated by ʿĀ'isha, the Prophet Muḥammad's wife. See al-Qazwīnī, *Sunan Ibn Māja*, v. 1, 157, hadith no. 1792.

⁴⁸⁶ Abū ʿUbayd, *Kitāb al-Amwāl*, 592.

⁴⁸⁷ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 306-7; al-Ramī, *Nihāyat al-Muḥtāj*, v. 3, 135; al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 255; Ibn Qudāma, *al-Mughnī*, v. 2, 541-2.

⁴⁸⁸ See Abū ʿUbayd, *Kitāb al-Amwāl*, 462.

absolute and thus does not refer to any period of time or place.⁴⁸⁹ As for Mālik, delay is possible if when *ḥawl* arrives, the payer is travelling and his wealth is at home which is in another state. The delay is allowed until he arrives back home, but if he has enough resources to pay his zakat at the time, then he is required to pay it immediately.⁴⁹⁰

5.2.4 Consequences of Delay

The prohibited delay carries two main effects on the owner of zakat or the zakat institution who is at fault, namely religious and financial consequences. The majority of jurists believe that a delay in payment will create an offense in Islamic law, whereby the repercussions include sins, punishment and penalty. Punishment for delay depends on whether the delay is due to the owner's belief on the obligation of zakat or simply because of his refusal to pay on time. If the owner of zakat delayed the payment due to his disbelief about the obligation to pay zakat, he will be considered as a disbeliever of Islam. Thus, he is punishable by death and, at the same time, the state has the right to seize his wealth equivalent to the amount of zakat that he owed. If the owner delays the payment not because of his disbelief, he will be asked to pay his due of zakat. If he still refuses to pay, then he will be punished where the punishment includes loss of ability to give testimony, disciplinary punishment and seizure of wealth for the amount of zakat that he refused to pay.⁴⁹¹

The owner's obligation to pay zakat remains until the balance due is fully settled, regardless of the payer's information about his obligation, whether he is staying in an

⁴⁸⁹ Ibn Qudāma, *al-Mughnī*, v. 2, 541-2.

⁴⁹⁰ Sahnūn, *al-Mudawwana*, v. 1, 336.

⁴⁹¹ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 309; al-Kāsānī, *Badāʾiʿ al-Ṣanāʿiʿ*, v. 2, 373; al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 255-7; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 169; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 142.

Islamic or non-Islamic state and whether the delay is caused by his neglect or otherwise. The only circumstance that allows an obligation to be waived is when the payer has no wealth left to pay for the balance due. This is the view of the majority of jurists.⁴⁹²

The determination of rate of payments and the number of payments that the owner has to settle vary among the jurists depending on several inter-related factors, namely:

- a. the number of years of delay;⁴⁹³
- b. jurists' opinions whether zakat obligation is associated with the substance of the zakatable wealth (*ʿayn*) or related to *dhimma*, that is the liability of the person who is in possession of the wealth;
- c. the amount of wealth available to pay for the due;
- d. the owner's contribution towards the delay;
- e. the owner's contribution towards the damage of the zakatable wealth during the period of delay; and whether
- f. the owner is still alive or is deceased.

It is notable that, in calculating the amount of delayed zakat dues over the years, the majority of jurists refer to the accumulation or reduction of wealth at each particular year of obligation, and not those at the point of time of payment, except when at the

⁴⁹² Al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 309-40; Ibn Qudāma, *al-Mughni*, v. 2, 542-3; Al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 141-2; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 464; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 33.

⁴⁹³ The point of time when zakat on wealth becomes an obligation can be either a full one year of ownership (*ḥawl*) or at the time of yield depending on the types of zakatable wealth. For ease of discussion, the point of time for both will simply be referred to as a full one year, except where the distinction between the two is necessary.

point of payment there is a reduction of *niṣāb* either due to damage, loss, or negligence.⁴⁹⁴ Accordingly, for any delay that is above a year, there would be two possible states of zakatable wealth, namely, a reduction of *niṣāb* after zakat is paid for the earlier delayed years, and a state of equivalent to or above the *niṣāb*. The reason for the latter can be a continuous accumulation of zakatable wealth throughout the delayed years or simply that the zakatable wealth is larger than the amount of zakat due and the *niṣāb*.

The jurists who hold that zakat obligation is associated with the substance of the zakatable wealth (*ʿayn*), require that the amount due be deducted from the zakatable wealth itself; hence, any reduction in *niṣāb* in consequent years will mean that the payer will no longer be obliged to pay. For example, an owner who has 40 goats and has not paid his zakat for the past three years, has to pay one goat only for the first year of delay since, for the last two years, his wealth then is considered to be below *niṣāb*. This is the view of the majority of jurists including Abū Ḥanīfa, an account of Ibn Ḥanbal, the Malikīs and the Shāfiʿīs.⁴⁹⁵

By contrast, for those who hold that the obligation is associated with the owner's *dhimma*, they insist that the owner has to pay a goat for each of the three years. The reason for this is that other wealth can be used to pay the zakat due, thus the amount of zakatable wealth (in this case the goats) will maintain above the *niṣāb* throughout the rest of the delayed years.⁴⁹⁶

Likewise, in the first view, the due for a continuously increasing zakatable wealth throughout the years has to recognize any due paid for the previous years first. For

⁴⁹⁴ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 88.

⁴⁹⁵ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 88; al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 464-6; al-Azhari, *Jawāhir al-Iklīl*, v. 1, 123.

⁴⁹⁶ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 88; al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 464.-6.

example, say that an owner has not paid his zakat due for the past two years, where in the first year he had 40 goats and in the second year his goats are 80. The zakat that he has to pay is a goat each for both of the years. As for those who hold that zakat may be paid from his other wealth, they maintain that the owner has to pay according to the amount of zakatable wealth owned in each year. Basically, for the case above this will necessitate the owner to pay a goat for the first year and another two goats for the second year.⁴⁹⁷

For the majority of jurists, the requirement for replacement of unpaid zakat which is damaged or lost during the delay with or without neglect either for owner or collector is obligatory. According to al-Kāsānī, Ibn Ḥanbal holds that the reason for the obligation is that delay itself is an act of negligence.⁴⁹⁸ The defaulter's responsibility to pay for the damages or losses incurred, however, depends on whether they have the wealth to pay for the damages and vice versa.⁴⁹⁹

In the event that the owner has died, the majority of jurists hold that zakat has to be paid proportionately from his wealth along with his other debts, if his debt were found to be bigger than his assets. The exception is found among the Ḥanafis who hold that the zakat collected will become voluntary alms (*ṣadaqa*) unless the deceased gave a will (*waṣīyya*) that requests the payment to be made for him. And for those who hold that the obligation is associated to *ʿayn* of the zakatable wealth, they believe that the zakat due should be prioritized above other debts.⁵⁰⁰

⁴⁹⁷ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 88; al-Maqdisī, *al-Sharḥ al-Kabīr* v. 2, 465-6.

⁴⁹⁸ Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, v. 2, 374.

⁴⁹⁹ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 174-6; al-Azhari, *Jawāhir al-Iklīl*, v. 1, 141-2; al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 309-10; Ibn Qudāma, *al-Mughnī*, v. 2, 542-3.

⁵⁰⁰ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 466-7; al-Nawawī, *Kitāb al-Majmūʿ*, v. 5, 309; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 33.

From the above views of the classical jurists, we noted that the majority of jurists disallowed delay in the payment of zakat. Nevertheless, the prohibition is eased when the delay is more beneficial to the recipients or in circumstances where the delay itself is unavoidable. Thus it can be concluded that in investing zakat, if the investment can be proven or found beneficial to the recipients or in cases where investments are conducted because delay is unavoidable, the state is allowed to proceed with the investment.

Many modern jurists like Shubayr, al-Fawzān, al-Yāsīn⁵⁰¹ and ʿAbd al-Laḥīf support the argument that a beneficial delay is accepted, thus allowing investment of zakat that benefits the recipients. However, they insist that the investment must be undertaken under certain conditions. Shubayr and al-Fawzān maintain that even though delay in the payment of zakat in general is not allowed by Sharīʿa, delay that is beneficial for the recipients is, however, excused. Delaying the payment because of investment in projects that can provide a source of income and employment for the recipients, hence, should be allowed. The investment, however, must be undertaken only after adequate measures have been taken to avoid any unnecessary loss.⁵⁰² Investment of zakat according to al-Yāsīn, is possible for the groups of recipients other than the *fuqarāʾ* and *masākin*. Allocation for investment under these two groups is not possible because of their current demanding need.⁵⁰³ ʿAbd al-Laḥīf suggests that the problem of delaying fulfilment of the needs of the poor can be solved by obliging a specific allocation of zakat revenue to fulfil the demanding needs of the poor. The zakat revenue should not

⁵⁰¹ Aḥmād Bāzīʿ al-Yāsīn (Sheikh Ahmad Bazie' al-Yaseen) is a member of Kuwait Chamber of Commerce and Industry, and was for years on Board of Directors of the Central Bank of Kuwait. An early pioneer of Islamic Banking, he helped in establishing Kuwait Finance House (KFH) in 1977, and chaired its Board of Directors till 1993. He chairs the Shariah Board of KFH and several other Islamic banks and financial institutions.

⁵⁰² Shubayr, "Istithmār Amwāl al-Zakā", 42-3; al-Fawzān, *Istithmār Amwāl al-Zakā wa Mā fī Ḥukmiha*, 147.

⁵⁰³ Muṭamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 384.

be spent wholly on zakat investment only. Zakat should also be invested only in projects that require a very short-term period of investment, for example, for a day, a week or a month. Thus when the invested zakat is required to fulfil any recipient's demanding need, it can be liquidated and paid to him instantly.⁵⁰⁴

The same philosophy of allowing a beneficial delay is observed in a *fatwā* issued by the Jawatankuasa Fatwa Negeri Terengganu (Fatwa Committee of the state of Terengganu) in 1997. The *fatwā* disallows investment of zakat on several bases among which is the delay of payment from the owner to the rightful recipients. But in the same *fatwā*, the committee also approved the usage of the zakat fund to establish factories and industries which can provide employment to the *faqīr* and *miskīn* indicating that a delay is permitted if the action could benefit the recipients.⁵⁰⁵

5.3 Ownership of Zakat

The second issue concerns the conferring of full individual ownership right (*tamlīk*) of the zakat to the recipients. In normal circumstances, zakat will be paid to the recipients where each of them is entitled to a full ownership right of the bequest. In other words, each of the recipients will be determined and will receive his portion of zakat individually, where he will have an absolute control over the zakat received. Al-Nawāwī, in his *al-Majmūʿ* states,

⁵⁰⁴ ʿAbd al-Laṭīf, “Tafṣīl Dawr al-Zakā fi Mukāfaḥat al-Faqr bi al-Ijtihādāt al-Fiqhiyya”, 18.

⁵⁰⁵ Mesyuarat Jawatankuasa Fatwa Negeri Terengganu, Kali ke-2, Penggal ke-4, held on 19 Jan. 1997.

“The collector of zakat or the ruler is not allowed to transact on the obligations (zakat) that they are carrying until (the zakat) are received by their rightful owners, for the *fuqarāʾ* are competent to transact. Therefore, any transaction on these obligations cannot be executed without their permission...”⁵⁰⁶

If the zakat fund is used for investment prior to its distribution to the recipients, first of all this *tamlīk* will be delayed and furthermore in some instances of investment, an individual full ownership of the fund may possibly be denied. For example, in the case where zakat is invested in a workshop that teaches poor women to sew and at the same time where they can generate some income through sale of their produce. Zakat in this case is used to buy the sewing machines and the supplies. The poor women have no individual claims on the ownership of the sewing machines for they are dedicated to the poor women in general. The ownership is normally held by the zakat institution or the organization responsible for managing the workshop who acts as the relative owner of the zakat. Apart from the supplies used to make their produce, the poor women only have beneficial rights to utilize the sewing machines. Another example is an apartment block financed by zakat and dedicated as temporary shelter for any Muslim who could not afford to rent or own his own place. The apartments’ ownership is withheld by the zakat institution and the recipients are only given the usufruct rights to occupy the apartments.

⁵⁰⁶ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 155-6.

5.3.1 Definition of *Tamlīk*

Tamlīk is a verbal noun of “*malaka*” and literally means an act of giving someone ownership of something. The ownership provides the owner with the right to dispose of the property and utilize its usufruct.⁵⁰⁷

In the context of zakat payment, *tamlīk* refers to the payment of zakat to the recipient who in the exchange is conferred full ownership⁵⁰⁸ rights on the zakat and thus has the liberty to dispose of it in any way that he desires.⁵⁰⁹ The many examples of full payment of zakat to individual recipients prevalent during the classical period and the lack of discussion on relative⁵¹⁰ and beneficial ownerships of zakat,⁵¹¹ imply that the obligation

⁵⁰⁷ See Ibn al-Manẓūr, *Lisān al-ʿArab*, v. 10, 491-3 on ‘*malaka*’.

⁵⁰⁸ Based on *maḥl al-ʿaqd*, there are two types of ownerships recognized by Islamic law as an outcome of an exchange; full ownership of the *maʿqūd ʿalayh* (subject matter) or a restricted ones, known as beneficial ownership. Full possession gives the owner full control over the asset including disposing the property without being an object of contest by others. Beneficial ownership limits the owner to utilize the usufructs rights of the assets only because he does not nominally own the asset itself. See al-Bahūfī, *Kashshāf al-Qināʾ*, v. 2, 170; al-Qarāfī, *al-Furuq*, v. 1, 187.

⁵⁰⁹ Muḥammad ʿUthmān Shubayr, “Mabdaʾ al-Tamlīk wa Madā ʿItibārihi fī Sharf al-Zakāʾ”, in al-Asyqar, Muhammad Sulaiman et. al., *Abḥath Fiqhiyya Fī Qaḍāyā al-Zakāt al-Muʿaṣira* (Amman: Dār al-Nafāʾis, 2000), v. 2, 400.

⁵¹⁰ Based on the owner of an asset, an ownership can be divided into specific and general ownership. In specific ownership, the ownership can be owned by an individual (known as individual ownership) or shared among several owners (known as joint ownership). In both of these ownerships, each owner’s share of ownership is clearly determined. While in a general ownership, the owners’ shares are not clearly determined and the access to the ownership rights depends on certain attributes. There are two types of general ownership, collective (*al-milkiyyat al-jamāʿiyya*) and common ownership (*al-milkiyyat al-ʿāmma*). Common ownership refers to an ownership where each of the public has a claim on its benefits. In a collective ownership, the owners are limited to a group of people sharing the same attributes like recipients of zakat in general or the group of *fuqarāʾ* only. The owner of a general ownership is typically an entity other than human, which is accorded juristic personality enabling it to represent and act on behalf of the ownership’s beneficiaries. This kind of ownership is known as relative ownership (*ʿitibārī*). Islamic jurists recognizes relative ownership as a valid ownership as indicated by the concept of *dhimma* attributed to certain

of *tamlīk* also means that the concession of full ownership must be accorded to individual recipients.⁵¹² According to al-Sarakhsī, payment of zakat to a group of recipients is considered accomplished even when the payment of zakat is paid to an individual within the group. The Shāfi'īs also assume the same except that they insist a minimum of three individual recipients of the same group to represent that an allocation has been made to that particular group of recipients.⁵¹³ Disallowance to pay zakat to build mosques, bridges, or aqueducts and to repair roads among the majority of jurists also indicates their reluctance to grant other than individual ownership.⁵¹⁴ Ibn Qudama commenting on payment of zakat to a group instead of an individual recipient says, “We never know of payment to a group that is meant to an individual ...”⁵¹⁵

The majority of jurists hold that the payment of zakat to recipients must involve this act of *tamlīk*.⁵¹⁶ The view is based on the word (*ʿitaʿ*) – which means give – found in multiple verses of the Quran such as, “And be steadfast in prayer; give zakat, and bow down your heads with those who bow down (in worship)”⁵¹⁷, “Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have

entities other than human being such as *waqf*, *bayt al-māl*, schools, hospitals, mosques and other charitable institutions. See Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 159-60; Mahdi Zahraa, “Legal Personality in Islamic Law”, *Arab Law Quarterly*, 10: 3, (1995), 202-4.

⁵¹¹ The lack of discussion on relative ownership is more evidenced when compared to another type of charity which is endowment (*waqf*). Al-Azharī, *Jawāhir al-Iklīl*, v. 1, 138-142; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 169-202; Sahnūn, *al-Mudawwana*, 342-347; Muṭamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 364, 367, 372.

⁵¹² Ḥasan ʿAbdallāh al-Amīn, “Tawḍīf al-Zakā fi Mashārīʿ Zāt Rīʿ Dūna Tamlik Fardiy li al-Mustaḥiq”, Muṭamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 364; Shubayr, “Mabdaʿ al-Tamlik wa Madā Iʿtibārihi fi Sharf al-Zakā”, 400.

⁵¹³ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 10.

⁵¹⁴ Ibn Qudāma, *al-Mughni*, v. 2, 527-8.

⁵¹⁵ Ibn Qudāma, *al-Mughni*, v. 2, 693.

⁵¹⁶ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9; Ibn Qudāma, *al-Mughni*, v. 2, 530-1; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 139.

⁵¹⁷ Qur. 2: 43.

their reward with their Lord: on them shall be no fear nor shall they grieve”⁵¹⁸ and “...So establish regular prayer, give regular charity, and hold fast to Allah! ...”⁵¹⁹ The word according to jurists such as al-Shīrāzī and Ibn ʿĀbidīn implies a full possession on the zakat paid where the recipient as an owner will have a full right to dispose of the property without being contested by others.⁵²⁰

The Ḥanafis have outlined four conditions for *tamlīk* to be in effect. There are,⁵²¹

- a. The actual undertaking of *tamlīk* whereby the recipient is in fact given the full ownership title of the due. Thus, an act of giving without being meant for ownership (*ibāḥa*) like treating the recipients to food or building a mosque, repairing a road, deepening a river, releasing one’s slave, even with the intention to pay zakat or paying a poor person’s debt, with or without his consent prior to possession will not be sufficient to be considered as zakat payment because all of these do not involve any giving of rights of the wealth to the recipients,
- b. The recipients has the legal competence to possess the wealth, thus excluding a person who is insane, or under the age of discretion, and slaves,
- c. There is a complete conference of right. A mere transfer from a father to his children is not considered as *tamlīk* because the payer may still utilize the wealth afterwards, and
- d. The exchanged goods are wealth that is tangible and lasting. This excludes usufruct of goods.

⁵¹⁸ Qur. 2: 277.

⁵¹⁹ Qur. 22: 78. Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 171-5.

⁵²⁰ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 171, 291.

⁵²¹ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 171-2, 291-3; Sahnūn, *al-Mudawwana*, v. 1, 346; Shubayr, “Al-Tamlīk wa al-Maṣlaḥat Fihi wa Natāʾijuhu”, 215-6.

5.3.2 Absolute versus Restricted *Tamlīk*

The necessity of *tamlīk* in the payment of zakat is also inferred by the usage of '*lām al-tamlīk*' which is a preposition used to signify transfer of rights, found at the beginning of the list of recipients stated in the verse of the Quran that outlines the designated recipients of zakat,

“Alms are for the poor (*faqīr*) and the needy (*miskīn*), and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer: (thus is it) ordained by Allah and Allah is full of knowledge and wisdom.”⁵²²

As noted above, the majority of jurists maintain that a full and complete ownership of zakat should be granted to the recipients in all of the groups of recipients. Due to another preposition which is '*fī al-ẓarfiyya*' which appears at the beginning of the final four groups of recipients, however, the Shafi'īs and the Hanbalīs insist that these last four groups must be allocated a more restricted ownership compared to the first four groups of recipients. According to the Shafi'īs and the Hanbalīs, the first group that consists of the *faqīr*, *miskīn*, administrator of zakat and whose heart is reconciled to Islam is affixed with '*lām al-tamlīk*', known also as '*lām al-mustaqirr*' which requires a full conference of right to them. This *lām* carries the connotation of an absolute *tamlīk* since it involves wealth that can be owned and the recipient is a person that can own the wealth.⁵²³ An absolute *tamlīk* gives the new owner full control of the good received, which implies that he is fully capable of utilizing the good and its usufructs and products as he likes, and disposing of the property without being an object of contest by others.

⁵²² Qur. 9: 60; al-Bahūfī, *Kashshāf al-Qinā'*, v. 2, 282; al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, v. 2, 457; v. 3, 74; al-Shīrazī, *al-Muhadhdhab*, v. 6, 132.

⁵²³ Al-Bahūfī, *Kashshāf al-Qinā'*, v. 2, 103; al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, v. 2, 457; al-Khaṭīb, *Mughnī al-Muḥtaṭā*, v. 3, 106; Muṭamar Majma' al-Fiqh al-Islāmī, *Majallat Majma' al-Fiqh*, 408.

The second group that comprises those in debt, in bondage, for the cause of Allah and the wayfarers, on the other hand, is affixed with a different preposition known as '*fī al-ẓarfiyya*'. This preposition, according to the Shāfi'īs and the Ḥanbalīs, denotes that ownership is restricted for certain purposes only. Though zakat given to these groups must be clearly received and possessed by them, it has to be used for each group for a specific purpose, for example, only to pay a debt for a debtor or to free slaves. If there is some excess after the money is spent for the specific purposes or the purpose has disappeared, then the money has to be returned to the ruler or its representative.⁵²⁴ And in cases where the zakat allocation is found lacking to serve these purposes, according to the Shāfi'īs, the zakat can be invested to gain the lacking amount needed.⁵²⁵

5.3.3 Non-requirement of *Tamlīk*

Other jurists like Ibn Taymiyya and the Mālikīs have a slightly different view regarding the appearance of the '*fī al-ẓarfiyya*'. They maintain that *tamlīk* is only required for the first four groups of recipients. The '*fī al-ẓarfiyya*' affixed to the last four groups of recipients shows that in paying the zakat, the owner is not required to give it directly to the recipients. A payment that is made to fulfil these recipients' needs, although given to a third party, is sufficient. Thus payment of zakat directly to the creditor to settle the debt of a debtor who is a rightful recipient of zakat is accepted, according to Ibn Taymiyya and the Mālikīs. This argument is further enhanced by the hadiths that

⁵²⁴ Al-Bahūfī, *Kashshāf al-Qinā'*, v. 2, 282; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 178; al-Kāsānī, *Bada'ī' al-Ṣanā'ī'*, v. 2, 457.

⁵²⁵ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 178-9.

permit utilization of zakat to set a slave or a prisoner free, to settle the debt of a deceased, to build a fort to secure a city from the enemy, etc.⁵²⁶

There are also jurists like al-Shawkānī who allow payment of zakat without *tamlīk*.⁵²⁷ Al-Shawkānī allows entertaining the *faqīr* using zakat payment and argues that there is no definite evidence showing that *tamlīk* is required in the payment of zakat.⁵²⁸ The ‘*lām*’ is considered to signify for specific groups only and not meant for *tamlīk*.⁵²⁹

Modern jurists who have similar views include Aḥmad Muḥammad Jamāl who argues that the verse itself does not describe the necessity of an ownership transfer because the preposition ‘*lām*’ in question was actually meant to signify specific groups that may be given zakat. Thus *tamlīk* for him is not a requirement in the payment of zakat.⁵³⁰ Another scholar, Zayas argues that there is no indication whatever that an actual transfer of the ownership of zakat is necessary in each and every case for the act of

⁵²⁶ See Ibn Taymiyya, *Majmu‘ al-Fatawā*, v. 25, 80; al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 139-40. It should be noted here that the Malikīs group *ibn al-sabīl* with the first four groups of recipients. See Maḥmūd ibn ‘Umar al-Zamakhsharī, *Tafsīr al-Kashshāf ‘an Ḥaqā’iq Ghawāmiḍ al-Tanzīl wa ‘Uyūn al-Aqāwīl fī Wujūh al-Ta’wīl* (Beirut: Dār al-Kitāb al-‘Arabī), v. 2, 282-3; al-Dusūqī, *Ḥāsyiat al-Dusūqī*, v. 1, 496-7.

⁵²⁷ Shubayr, “Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakā”, 413.

⁵²⁸ Muḥammad ibn ‘Alī al-Shawkānī, *Kitāb al-Sayl al-Jarār al-Mutadaffiq ‘Alā Ḥadāiq al-Azhār* (Cairo: Lajnat Ihya’ al-Turāth al-Islāmī, 1970-88), v. 2, 77.

⁵²⁹ Ibn ‘Ābidīn, *Radd al-Mukhtār*, v. 3, 284.

⁵³⁰ Mu‘tamar Majma‘ al-Fiqh al-Islāmī, *Majallat Majma‘ al-Fiqh*, no. 3, part 1, 409. Aḥmad ibn Muḥammad ibn Muḥammad Jamāl (1924-92) was born in Mecca and authored more than 40 books on Islamic teachings. These include *al-Iqtisād al-Islāmī: Dirāsāt Muḥaza* (1981), *Muftarayāt ‘Alā al-Islām* (3rd ed., 1975), *Makānik Tuḥmādī* (1964), *‘Alā Ma’idat al-Qur’ān: Dīn wa Dawla* (1979) and *Naḥwa Tarbiyyat Islāmiyya* (1980). He was also a member of many well known Islamic organizations like Majma‘ al-Fiqh al-Islāmī (1985-92), Rābiṭat al-‘Ālamī al-Islāmī, Majlis al-Awqāf in Mecca and many more. He taught Islamic civilization at the University of King Abdul Aziz in Saudi from 1967 till his death.

zakat to be lawful. In distributing zakat, it is sufficient that the lawful beneficiaries are to benefit from the use of zakat funds according to their needs.⁵³¹

5.3.4 Relative and Beneficial Ownerships

Some other modern jurists maintain that *tamlīk* in the payment of zakat should not be limited to concession of full zakat ownerships to individual recipients only, but should be reviewed and extended to relative and beneficial ownerships.⁵³² Jurists like Ambāy, for example, based on the above Mālikī view, argues that since zakat for the last four groups of recipients can be paid through another party other than the recipients, the zakat institutions are then allowed to invest their portions, the benefits of which are channelled to the recipients' specific purposes.⁵³³ Al-Āṣifi also supports this line of thought, as he maintains that the word '*fī*' attached to the last four groups in the verse signifies the collective usage and ownership of zakat by groups and is not meant for individual ownership.⁵³⁴

Some modern jurists like al-Zarqā', Abū Zahra, Ibn Bayh and al-Mawdūdī believe that collective ownership among zakat recipients should be permissible as zakat under the group of *fī sabīl li Allāh* is permissible to be distributed to schools, hospitals and so forth,

⁵³¹ Farisha G. de Zayas, *The Law and Institution of Zakāt* (Kuala Lumpur: The Other Press, 2003), 302.

⁵³² Muṭamar Majma' al-Fiqh al-Islāmī, *Majallat Majma' al-Fiqh*, no. 3, part 1, 364.

⁵³³ See view of Rauḥān Ambāy in Muṭamar Majma' al-Fiqh al-Islāmī, *Majallat Majma' al-Fiqh*, no. 3, part 1, 413-4. Ambāy at that time was a representative of Senegal at the Majma' al-Fiqh al-Islāmī. He is a professor at the University of Dakar and is the director of al-Maḥad al-Islāmī of Dakar, Senegal.

⁵³⁴ Muḥammad Maḥdī Al-Āṣifi, *al-Niẓām al-Mālī wa Tadāwul al-Tharwa fī al-Islām* (Beirut: Dār al-Ghadīr, 1973), 59-60. Al-Āṣifi (1939-) was born in Najaf, Iraq. He was one of the leaders of the Daawa party in Iraq who migrated to Iran after the Islamic Revolution in Iran. He is a renowned cleric in Iran.

justified by the necessity of public interest. These institutions are held by the state or its representative as relative (*ʿtibārī*) owner and only beneficial ownership rights are granted to the recipients. Their view is also based on the establishment of institutions like the *bayt al-māl* which is responsible in collecting or receiving payment from eligible owners where the rights accorded to them are similar to rights accorded to a collector.⁵³⁵ Meanwhile al-ʿIbādī attempts to justify collective ownership by arguing that it is similar to individual ownership since both provide an ownership to the recipients. The only difference is that the ownership status in collective ownership is a general (*shāʿ*) ownership where the owner is the general poor.⁵³⁶

Other modern jurists like al-Qarāḍāwī, al-Amīn and Shubayr argue that the recognition of relative and beneficial ownership in the payment of zakat has become a necessity in ensuring that the objectives of zakat are fulfilled.⁵³⁷ According to Shubayr, if beneficial

⁵³⁵ See views of al-Zarqāʾ and ʿAbdullāh Ibn Bayh in Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no.3, part 1, 372; 416-7; al-Mawdūdī, *Fatāwā al-Zakā*, 54-5; Shubayr, Muḥammad ʿUthmān, “Al-Tamlik wa al-Maṣlaḥat Fīhi Wa Natāʾijuhu”, 219-20. See also Ḥasan Ayyūb, *al-Zakā fī al-Islām*, (Kuwait: Dār al-Qalam, 1983) 118. Muṣṭafā Aḥmad Al-Zarqāʾ (1904-1999) was born in Aleppo, Syria. In 1944, he became a lecturer at the University of Damascus, teaching civil law, hadith and other disciplines. He continued to teach in the university until 1966 when he retired. He wrote many books on *fiqh* including *al-Madkhal al-Fiqh Al-ʿAm*. He served for many years on the Majmaʿ al-Fiqh al-Islāmī in Mecca and was a member of the Consultative Council of the Islamic University of Madinah. In 1984, he was awarded the King Faisal International Prize for his work on Islamic Fiqh. Ibn Bayh is a Somalian and a member of the Islamic Jurisprudence Council based on Mecca. Currently, he is the chairman of the Global Centre of Renewal and Guidance established in London.

⁵³⁶ ʿAbd al-Salām al-ʿIbādī, in Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 394. Al-ʿIbādī is a Jordanian and currently is the secretary-general of the Fiqh Academy. He was a former Minister of Awqāf in Jordan. Among his works are *al-Milkiyya fī al-Sharīʿat al-Islāmiyya: Ṭabīʿatuhu wa Waṣfātuhu wa Quyūḍuhā* (1974), and *al-Fiqh al-Islāmī wa al-Huquq al-Maʿnawiyya* (1988).

⁵³⁷ Al-Amīn, “Tawḍīf al-Zakā fī Mashārīʿ Zāt Rīʿ Dūna Tamlik Fardiy li al-Mustaḥiq”, 365-7. See also the view of al-Qarāḍāwī in Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no.3, part 1, 386-7. Hassan ʿAbdallāh al-Amīn authored many books on Islamic banking including *Shariʿah Ruling (Hukm) on Contemporary Banking Transactions with Interest* (1991), *al-Waḍʿīʿ al-Maṣrafiyyat al-Naqdiyya wa Istithmāruhā fī al-Islām* (1983), *Taqniyyāt al-Māl wa al-*

ownership is found to be more effective for the poor recipients in achieving the zakat's objectives compared to an absolute ownership, than projects funded by zakat that provide only beneficial ownership to the recipients should not be denied.⁵³⁸ This is especially true if the investment projects are huge and need large capital outlays like the establishment of factories, big agricultural ventures, and business premises and so on. Giving the recipients joint ownerships of the project will be risky given the cost and also the complexities of its management which require supervision from a more organized institution.

All in all it showed that among the classical jurists, the majority view full concession of ownership to individual recipients as a necessity in the distribution of zakat. For the last four groups of recipients, however, the insistence that *tamlīk* is fulfilled in the payment of zakat to them becomes less stringent.

In contrast, modern jurists tend to advocate more flexible ownership to all groups of recipients. Even though in general they agree with the classical jurists that the concession of ownership to the recipients is a must in the payment of zakat, they disagree on the extent of ownership that should be granted to the recipients. Jurists like al-Qaraḍāwī, al-Amīn and Shubayr opine that the type of ownership of zakat conferred to the recipients is not necessarily limited to an absolute individual ownership only. The important thing at the end of the day is to ensure that the benefit of the investment eventually reaches the rightful recipients. A similar tendency is also observed at the zakat institutions in Malaysia where the regulations guiding their management clearly state that zakat is strictly limited to the eight groups of recipients and, even though

Iqtiṣād al-Muʿāṣira min Manẓūr Islāmī (2003); *Ḥukm al-Taʿāmul al-Maṣrafi al-Muʿāṣir bi al-Fawa'id "Taḥlīl Fiqhiy wa Iqtiṣādī"* (3rd ed., 2003).

⁵³⁸ Shubayr, "Mabda' al-Tamlīk wa Madā Iʿtibārihi fī Ṣarf al-Zakā", 415.

zakat is utilized in many investment projects, the benefit of the investment must eventually be channelled back to these recipients.⁵³⁹

5.4 Selective Groups of Recipients

One of the main purposes of zakat distribution is to fulfil the needs of the needy. This need varies from one recipient to another. This applies also to their need of zakat for investment. Investment of zakat, for example, is more needed by the *fuqarāʾ* and *masākīn* as an alternative measure to lessen their hardship compared to the *ibn al-sabiʾ* who receives zakat as an assistance during their travels. Thus, in investing zakat, at some point of time, there is a very likely possibility that some groups of recipients will be allocated zakat more than others. Given that not all of the recipients of zakat need zakat for investment purposes, then it is important to see the *Sharīʿa* view regarding allocation of zakat to selected groups of recipients only.

This part examines the Islamic legal views regarding allocations of zakat to selected groups of recipients only and the preferential order of allocation of zakat among these groups, if any. To facilitate this, the study first discusses the classical jurists' views regarding the kind of persons represented by each group. This will be followed by the definitions and perspectives of each of these at Majlis Agama Islam Wilayah Persekutuan (MAIWP) and LZS. Then it examines the jurists view regarding payment to selected groups of recipients only. Since the emphasis of zakat investment has

⁵³⁹ See *fatwā* issued by the Fatwa Committee of the Majlis Agama Islam dan Adat Melayu Terengganu on 30 January 2007 which states, "... any excess of zakat after distribution can be used to fund any development projects as long as the benefits eventually end with the recipients". (The *fatwā* is in the Malay language and has been translated by researcher).

always been the poor, the study focuses the discussion on the groups of *fuqarā'* and *masākīn* and only briefly discusses the rest of the groups of recipients.

5.4.1 The Designated Recipients

The recipients of zakat in general has been determined by verse 60 in Sūrat al-Tawba. According to al-Rāzī, the preposition '*innamā*' attached to the group of eligible recipients in the verse carries the connotation of restriction, thus limiting the payment of zakat to the eight groups of recipients stated in the verse only.⁵⁴⁰ Some jurists also add that the preposition '*lām*' in the verse also bears further evidence of restriction. Based on these arguments, jurists collectively agree that distribution of zakat is limited to the eight groups of recipients outlined in the verse only and no new group is possible.⁵⁴¹ They are, namely, the *fuqarā'*, *masākīn*, administrators of zakat, those whose hearts are reconciled, the slaves, the debtors, for the cause of Allah and the wayfarers.

5.4.1.a *Fuqarā'* and *Masākīn*

Fuqarā' (a plural form of *faqīr*) is an adjective of *faqara* which means to overcome or reduce a person to poverty or need. Thus the word *fuqarā'* refers to those who are poor and in need or in poverty.⁵⁴² While *masākīn* (a plural form of *miskīn*) derives from the root word *sakana* meaning to become calm or motionless and, in a figurative sense, refers to

⁵⁴⁰ Al-Rāzī, *al-Tafsīr al-Kabīr*, v. 4, 459.

⁵⁴¹ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 689; Abū 'Ubayd, *al-Amwāl*, v. 4, 577; al-Azhari, *Jawāhir al-Iklīl*, v. 1, 140; al-Shāfi'ī, *Kitāb al-Umm*, v. 3, 181.

⁵⁴² Ibn al-Manzūr, *Lisān al-ʿArab*, v. 5, 60-1.

the state of having nothing or being poor.⁵⁴³ Thus *masākīn* also generally refers to those who are in need or in poverty, similar to the state of *fuqarāʾ*.

Both terms synonymously described those having less than what a normal individual should need to survive, either for himself or with his dependants, or do not have a sufficient earning power to provide for it. The basic needs to survive include food, clothing, shelter, helper and other needs.⁵⁴⁴ However, when the two terms are used together, each word carries a different extent of state of need compared to another. The preferred view in the Ḥanafī and Malikī schools is that *miskīn* is someone whose need is more dire than *faqīr*.⁵⁴⁵ The Shāfiʿīs, on the other hand, consider that a *faqīr* is more in need than a *miskīn*.⁵⁴⁶ Even though the jurists disagree on the extent of need of each group, they agree, however, that in the distribution of zakat, the distinction is not as necessary as in cases of will (*waṣīyya*) and endowment (*waqf*). The reason is that whoever is in need of assistance to fulfil his basic needs, whether he is a *faqīr* or a *miskīn*, the person is entitled to zakat.⁵⁴⁷

5.4.1.b The Administrators (ʿĀmilūn)⁵⁴⁸

These are the people employed by the ruler to facilitate the collection and distribution of zakat. Among them are the collector (*sāʿī*), writer/clerk (*kātib*), distributor (*qassām*), one who pools various types of zakat collected (*ḥāshir*), one who knows the target

⁵⁴³ Ibn al-Manẓūr, *Lisān al-ʿArab*, v. 13, 214-6.

⁵⁴⁴ Al-Shāfiʿī, *Kitāb al-Umm*, v. 3, 182-3; Sahnūn, *al-Mudawwana*, v. 1, 342-4.

⁵⁴⁵ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 8; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 138; al-Jazīrī, *al-Madhāhib al-Arbaʿa*, v. 1, 621.

⁵⁴⁶ Al-Shāfiʿī, *Kitāb al-Umm*, v. 3, 182; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 171-3.

⁵⁴⁷ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 9.

⁵⁴⁸ For further details about this group of recipients, please see 4.1.2 above.

groups (*ʿarīf*), accountant (*ḥāsib*), and keeper (*ḥāfiẓ*).⁵⁴⁹ The term used to connote all of these workers is normally *ʿāmil* or in plural form *ʿāmilūn*.

In contrast to other group of recipients, the allocation for this group is not necessarily due to their needs. Instead, it is to pay for their services rendered. According to al-Ābī, zakat should also be given to rich administrator because it is a compensation for the services rendered.⁵⁵⁰

Jurists are in disagreement about the amount of allocation that should be made from the zakat collected for the *ʿāmilūn*. al-Ābī views that the pays should be according to typical payment for similar services. If zakat collected is at par with the standard pay, then all of it may be used to pay the *ʿāmil*'s salary. When the zakat collected cannot compensate for his service, he may then seek his allocation from the allocation for the poor. However, he is not allowed to take the due by himself to avoid unwanted consequences.⁵⁵¹ Al-Sarakhsī maintains that an *ʿāmil* deserves only an amount sufficient for their family and their own maintenance.⁵⁵² For the Shāfiʿīs, however, allocation of zakat for this group is limited to one eighth of the collection only. Allocation for an individual *ʿāmil*, on the other hand, depends on the amount of efforts and the responsibility carried by that officer in managing zakat.⁵⁵³

If zakat collected becomes damaged or loss prior to distribution, the *ʿāmilūn*'s right upon the collection will vanish. Nevertheless, the obligation to pay zakat on those who

⁵⁴⁹ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 175.

⁵⁵⁰ al-Ābī, *Jawāhir al-Iklīl*, v. 1, 138-9.

⁵⁵¹ al-Ābī, *Jawāhir al-Iklīl*, v. 1, 138-9.

⁵⁵² Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9.

⁵⁵³ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 189, 192.

has paid the zakat will be considered satisfied because the administrators have accepted it on behalf of the recipients.⁵⁵⁴

5.4.1.c Those Whose Hearts Are Reconciled (*al-Mu'allafat Qulūbuhum*)

In general, those whose hearts are reconciled refer to persons whom on receipt of zakat will soften their hearts towards Islam. According to Ibn ʿĀbidīn and al-Maqdisī, this group consists of three categories of people: those who were given zakat by the Prophet to soften their hearts towards Islam, those who were given zakat to prevent their vices towards Islam and those who had converted to Islam but their faith are still fragile.⁵⁵⁵

There are, however, discrepancies among the jurists whether they should encompass both Muslims and non-Muslims or only Muslims. There is also a view among the Ḥanafīs that this group is no longer available after the Prophet's time, since Muslims have become stronger and no longer need to reconcile anybody's heart towards Islam anymore.⁵⁵⁶ The recipients under this category at the Prophet's time were the chiefs of Arabs like Abū Ṣufyan ibn Ḥarb, Ṣafwān ibn Umayya, ʿUyayna ibn Ḥaṣn and al-Afraʿ ibn Ḥābis. They were given zakat to soften their hearts towards Islam and consequently their tribes' members.⁵⁵⁷ Abū Bakr during his reign upon an advise by ʿUmar ibn al-Khaṭṭāb, however, has discontinued to give zakat to this group of recipients due to their diminishing contributions to Islam.⁵⁵⁸ This leads to a disagreement between the jurists whether this category is still valid after the Prophet's time or otherwise. For the Mālikīs, the popular view among them is that the non-believer who is paid to reconcile

⁵⁵⁴ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9.

⁵⁵⁵ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 287; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 696-8.

⁵⁵⁶ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 287-9.

⁵⁵⁷ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 9.

⁵⁵⁸ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 9.

his heart towards Islam is no longer around. Imam Mālik holds that this group only exists during the Prophet's time only and there is no need for them today due to the strength of Islam.⁵⁵⁹ But some Mālikīs insist that even though the above persons are no longer around but payment for a Muslim to ensure his commitment towards Islam is still valid under this qualification.⁵⁶⁰ Others like Al-Shāfi'ī and Abū Ḥanīfa maintain that the right of this group does subsist till today but has to be approved by the imam first.⁵⁶¹

The majority of the jurists, however, insist that this group is still in existence today. The annulment during the reign of Abū Bakr was for the fact that there were no deservers entitled under this category at that time.⁵⁶² The annulment also could not be taken as an affirmative text since it has no authority to annul a definite Quranic text.⁵⁶³ Thus, they assert that this group is still relevant today. They also maintain that only the ruler can make the decision to determine who is qualified to receive zakat under this category.⁵⁶⁴

5.4.1.d Those In Bondage (*Riqāb*)

This group comprises debt bonded or contracted slaves. The purpose of zakat payment to this group is to help them pay the debt that bonded them to their masters.⁵⁶⁵ Jurists are in disagreement whether the payment should be given to the slave to free himself or given directly to his master. For al-Shāfi'ī, the money may be given to the slaves to free

⁵⁵⁹ Sahnūn, *al-Mudawwana*, v. 1, 344.

⁵⁶⁰ Al-Azharī, *Jawāhir al-Iklīl*, v. 1, 139; Ibn Rushd, *Bidāyat al-Mujtahid*, 321.

⁵⁶¹ Al-Nawāwī, *Rawḍat al-Ṭālibīn*, v. 2, 177.

⁵⁶² Al-Azharī, *Jawāhir al-Iklīl*, v. 1, 139.

⁵⁶³ Ibn 'Ābidīn, *Radd al-Mukhtār*, v. 3, 288.

⁵⁶⁴ Al-Qarāḍāwī, *Fiqh al-Zakā*, v. 2, 608.

⁵⁶⁵ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 139; al-Jazīrī, *al-Madhāhib al-Arba'a*, v. 1, 621.

themselves with it.⁵⁶⁶ But Mālik for the matter holds that for the slave to buy himself out of the bondage using his own wealth is not allowed.⁵⁶⁷ Whereas Al-Sarakhsī questions the validity of zakat if it is paid directly to the master because in payment of zakat, he insists that *tamlīk* has to be present. Whatever is taken by the seller of the slave is an exchange of what he (seller) owns, and the slave is freed from his master's ownership, thus no *tamlīk* untoward the slaves is in existence.⁵⁶⁸

In the modern world, there are various views regarding the relevancy and thus existence of this group. According to Shaltūt, the terminology should be widened to also include those oppressed by an unjust government whether politically, economically or ideologically. Shaltūt equates this modern enslavement to those bondage in the early years of Islam.⁵⁶⁹ On the other hand, a resolution in a conference of zakat in 1989 concluded that this group is no longer in existence. Its rightful allocation of zakat was decided to be disbursed to the other groups of recipients.⁵⁷⁰

5.4.1.e Those in Debt (*Ghārimūn*)

Debtors defined are those whose debt is basically greater than their asset. Al-Qurṭubī in his exegesis defines debtors as those who are saddled with debt and has no mean in settling it.⁵⁷¹ In Islamic law, debtors who may receive zakat are of two types.⁵⁷² One is

⁵⁶⁶ Al-Shāfi'ī, *Kitāb al-Umm*, v. 3, 215.

⁵⁶⁷ Sahnūn, *al-Mudawwanah*, v. 1, 345.

⁵⁶⁸ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 9-10.

⁵⁶⁹ Shaltūt, *al-Islām: 'Aqīda wa Sharī'a*, 104.

⁵⁷⁰ See al-Nadwat al-Thāniyya li Qaḍāyā al-Zakāt al-Mu'āṣira, held by Bayt al-Zakāt al-Kuwaytī in Kuwait on 5 June 1989.

⁵⁷¹ Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *al-Jāmi' li Ahkām al-Qur'ān* (Riyāḍ: Dār 'Ālim al-Kutub, 2003), v. 8, 183.

those who are in debt due to personal circumstances like having no income to pay for their everyday needs. These debtors according to the jurists are those who are in debt and does not own a full *niṣāb* if his debts were paid.⁵⁷³ The majority of jurists view that these include people who own a *kifāya* but given the debts that they owe, their wealth will reduce to be below the *kifāya*.⁵⁷⁴

The Shāfi'īs put up three requirements that must be fulfilled first to enable a person to receive zakat under this category, which are;⁵⁷⁵

- a. debt which is incurred for his benefits. If the debtor has some earning ability but no wealth, some jurists view that he is entitled to the zakat because it will take him sometime without it to pay his debt.
- b. The debt is for something that is allowed.
- c. And it must be on due. If the period of settlement is in the future than the debtor is not titled to it, unless it is within the year.

According to al-Shāyijī, the jurists also agree that this type of *ghārimūn* can also include debtor who borrow to build hospitals, schools or even freeing a Muslim from enemies.⁵⁷⁶ Others view that zakat may also be paid to help those convicted with

⁵⁷² Rafiq Yūnus al-Maṣrī, “Maṣraf al-Ghārimīn wa Athāruhu fī al-Takāful al-Ijtimā'ī”, *Majallat Jāmi'at 'Abd al-'Azīz: al-Iqtisād al-Islāmī*, 18: 1 (2005), 3-27.

⁵⁷³ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-80; al-Jazīrī, *al-Madhahib al-Arba'a*, v. 1, 621.

⁵⁷⁴ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-80.

⁵⁷⁵ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-80; al-Shāfi'ī, *Kitāb al-Umm*, v. 3, 183-4.

⁵⁷⁶ Walid Khālid Al-Shāyijī, *al-Madkhal ilā al-Mālīyyat al-'Āmmat al-Islāmiyya* (Amman: Dār al-Nafā'is, 2005), 295-9. Walid Khālid al-Shāyijī is a Kuwaiti. He also authored *al-Ḍawābiṭ al-Shar'iyya li al-Infāq al-'Ām wa Athāruhu 'Alā al-Tanmiyyat al-Iqtisādiyya ma'a al-Taṭbīq 'Alā Dawlat al-Kuwayt: Dirāsāt al-Muqārana* (1998).

unintentional murder to settle the blood money (*diyya*) to the victim's family when the convicts' family cannot afford to pay it on their behalf.⁵⁷⁷

The second type of debtors is those who incur debts to settle a disagreement between parties or individuals regardless whether the person is rich or poor.⁵⁷⁸ Included In this group also are those befallen with catastrophe like flood, earthquake, etc. The amount of zakat given for these debtors should not exceed the debt incurred and the debtors were also poor than the amount should also able to cover their basic needs.⁵⁷⁹

5.4.1.f For the Cause of God (*Fī Sabīl li Allāh*)

The preferred views among the classical jurists are that they refer to those who are in fighting for the cause of God and do not have sufficient fund to pay the related expenses and also the pilgrims who are in need. The latter is based on a hadith about someone who gave his camel to those in the path of God and the Prophet used it to carry the pilgrims.⁵⁸⁰ For those warriors who are paid for their services or voluntarily went to the war, zakat is not allowed to be spend on them, and their expenses if need be, should come from other type of *ṣadaqa*.⁵⁸¹

⁵⁷⁷ See al-Nadwat al-Thāniyya li Qaḍāyā al-Zakāt al-Muʿāṣira, held by Bayt al-Zakāt al-Kuwayfī in Kuwait on 5 June 1989.

⁵⁷⁸ Ibn Qudāma, *al-Mughnī*, v. 2, 704; Ibn Taymiya, *Majmūʿ Fatawa Ibn Taymiya*, v. 25, 90; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-81.

⁵⁷⁹ See al-Nadwat al-Khāmisa li Qaḍāyā al-Zakāt al-Muʿāṣira, held by Bayt al-Zakāt al-Kuwayfī in Lebanon on 1995.

⁵⁸⁰ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10; al-Jazīrī, *al-Madhahib al-Arbaʿa*, v. 1, 621.

⁵⁸¹ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 183-45. More discussion on this group of recipients will follow in the next chapter.

5.4.1.g The Wayfarers (*Ibn al-Sabīl*)

Ibn al-Sabīl is a *musāfir* or someone who is on a journey, not a residence of the state and is in lost contact with his wealth in his home country. To enable a wayfarer to receive zakat, he must be someone who is in need of financial assistance and his journey also is required to be something that is allowed in Islam.⁵⁸² Apart from this, Mālik also considers those who is in pilgrimage as an *ibn al-sabīl* and even if he is rich in his country.⁵⁸³

According to a *fatwā* issued in a conference that was organized by the Bayt al-Zakā of Kuwait, apart from a traveler as defined above, among those that are considered part of this group are the pilgrims of *hajj* and *ʿumra*, students, those seeking medical treatments, missionaries, those participating in a war to uphold Islam, immigrants, tourists and journalists performing their duties.⁵⁸⁴

According to Ibn ʿĀbidīn, the amount of zakat that he is allowed to receive is based on his basic needs and he has to return any excess. This is in contrast to the poor who may receive more than his basic needs.⁵⁸⁵

⁵⁸² Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 184; al-Azhārī, *Jawāhir al-Iklīl*, v. 1, 139.; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10.

⁵⁸³ Sahnūn, *al-Mudawwana*, v. 1, 346.

⁵⁸⁴ See al-Nadwat al-Tāsiʿa li Qaḍāyā al-Zakāt al-Muʿāṣira, held by Bayt al-Zakāt al-Kuwayfī in Amman, Jordan on 29 April 1999.

⁵⁸⁵ Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 290.

5.4.2 The Designated Recipients from the Malaysian Zakat Institutions' Perspective

Overall, the zakat institutions in Malaysia also recognize these eight groups of recipients as the exclusive beneficiaries of zakat. The zakat laws in the country also clearly outline that distribution of zakat must be channelled to these groups only. Rule (4) of the Baitul Mal (Federal Territory) (Expenditure and Utilisation) Rules that rules the management of zakat at MAIWP, for example, clearly exemplifies this when it dictates that "all moneys and property paid into the Fund by way of zakat shall be spent or used for the (eight) groups of recipients only."⁵⁸⁶

In defining each group, the zakat institutions are mostly influenced by the classical jurists' views, especially the Shāfi'īs, though they also adapt the views of contemporary jurists particularly al-Qaraḍāwī.⁵⁸⁷ In defining the *fuqarā'*, for example, the Shāfi'īs' view where they are needier than the *masākīn* is prevalent at these institutions. At the Lembaga Zakat Selangor (LZS), *faqīr* is defined as a Muslim who has no wealth or earning power which can sustain the basic needs of himself or his dependants. On the other hand, *miskīn* is defined as a Muslim who has some form of wealth or earning power but still could not fully sustain his needs and that of his dependants.⁵⁸⁸

Apart from a full adaptation of the classical definition of these groups these institutions also introduce new scope of definitions for these groups of recipients. In defining these groups the institutions take into consideration current social norms and needs. Those whose hearts are reconciled, for example, are applied to those newly converted to

⁵⁸⁶ Rule (4), Baitul Mal (Federal Territory) (Expenditure and Utilisation) Rules, 1980, in *Administration of Islamic Law (Federal Territory) Act 1993*, by Mahkamah Syariah, Wilayah-wilayah Persekutuan (Kuala Lumpur: International Law Book Services, 1993), 53-4.

⁵⁸⁷ See for example *fatwā* on zakat distribution system issued by the Jawatankuasa Perunding Hukum Syarak (Fatwa) Negeri Selangor on 29 Aug. 1994.

⁵⁸⁸ http://www.e-zakat.com.my/baru/agihan/asnaf_layak.asp

Islam. Zakat for them is distributed mainly as a gift of appreciation for their conversion or spent for their Islamic education.⁵⁸⁹ Spending for the group of wayfarers are mainly made for paying the travelling costs for students studying abroad.

Meanwhile, the *riqāb* given the non-existence of debt bondage slaves nowadays has been redefined as those under oppression and subjugation whether from economic or political powers. The allocations under this group at LZS are spent for faith and moral (*akhlaq*) rehabilitation programmes for drug addicts, prostitutes and teenagers with social problems.⁵⁹⁰

5.4.3 Payment to Selected Groups Only

Mālik, Aḥmad Ibn Ḥanbal and the Ḥanafis hold that a ruler is allowed to spend the entire zakat on a group or selected groups only if the need arises. This was also the view of several Companions like ʿUmar, Ibn ʿAbbās and Ḥuzayfa ibn al-Yaman.⁵⁹¹ Only the Shāfiʿīs maintain that a ruler has to spend it on all of the eight groups if they exist, where each group should receive an equal portion if the zakat is limited in amount, and even when one group's need is more dire than another.⁵⁹²

⁵⁸⁹ Ibnor Azli Ibrahim and Norziana Salwa Daiman, "Tafsiran Muallaf, al-Riqab dan Fi Sabilillah dalam Pengurusan Agihan Zakat PZS: Satu Penilaian", in *Prosiding Seminar Kebangsaan Pengurusan Harta dalam Islam*, ed. Zamzuri Zakaria et al. (Bangi: Jabatan Syariah, Universiti Kebangsaan Malaysia, 2006), 180-3.

⁵⁹⁰ Ibnor Azli and Norziana Salwa, "Tafsiran Muallaf, Al-Riqab dan Fi Sabilillah", 185.

⁵⁹¹ Sahnūn, *al-Mudawwana*, v. 1, 342; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10-11. The jurists hold that payment to one group only would be sufficient as long as it is not to the administrator only. See Ibn Yūsuf ibn ʿAbdallāh al-Namirī al-Qurṭubī (known as ʿAbd al-Barr, *Kitāb al-Kāfī fī Fiqh Ahl al-Madīna al-Mālikī* (Riyāḍ: Maktaba al-Riyāḍ al-Ḥadītha, 1978), v. 1, 326-7; al-Rāzī, *al-Tafsīr al-Kabīr*, v. 4, 459-60.

⁵⁹² Al-Shāfiʿī, *Kitāb al-Umm*, v. 3, 189; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 190-3.

The conflict is due to their disagreement regarding the verse of the Quran concerning the distribution of zakat in Surāt al-Tawba: whether it should be interpreted literally or figuratively.⁵⁹³ The first group holds that the verse implies that a ruler should decide who is the most deserving among the recipients as the purpose of zakat is the elimination of want. Thus payment of zakat to a group that represents the poor will be considered as sufficient. They further support their argument with the verse that says, “If you disclose your *ṣadaqāt* (alms-giving), it is well, but if you conceal them, and give them to the poor, that is better for you...”.⁵⁹⁴ The Shāfi‘īs, on the other hand, argue that the ‘*lām al-tamlīk*’ and ‘*wāw al-tashrīk*’ in the verse literally conveys that all of the recipients are to be given and share the bounty.⁵⁹⁵

In distributing the zakat, jurists are unanimous that the administrators should be paid first because the payment is a compensation for their work.⁵⁹⁶ Distribution to the rest of the recipients, however, in general is encouraged to be based on the recipients’ level of need.

On the chosen or preferred groups among all of the groups of recipients, Abū ‘Ubayd maintains that preference should be given to the poor compared to other groups of recipients.⁵⁹⁷ A similar view is upheld by Mālik.⁵⁹⁸ Ibn Shihāb is quoted in *al-Mudawwana* as saying that the selection should be based on the group with the higher number of recipients and more in need.⁵⁹⁹ Al-Azhari, a disciple of Mālik, also encourages the prioritization of those in dire need where the amount given to them

⁵⁹³ Qur. 9: 60.

⁵⁹⁴ Qur. 2: 271. See also al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320.

⁵⁹⁵ Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320.

⁵⁹⁶ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 708.

⁵⁹⁷ Abū ‘Ubayd, *al-Amwāl*, v. 4, 577-81.

⁵⁹⁸ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 708.

⁵⁹⁹ Sahnūn, *al-Mudawwana*, v. 1, 344.

could be bigger than to other groups.⁶⁰⁰ Al-Shafi'i who views that each group should be allocated an equal amount in the distribution of zakat, also prioritize the group in need first which are the *fuqarā'*, *masākīn* and the debtors when he insists that the ruler has to ensure that these three groups' portion should be utilized fully first before distributing any excess from them to the other groups of recipients.⁶⁰¹

This is no surprise considering that most of the recipients are actually those in need. Al-Bahūfī rightfully points out that among the recipients who may receive zakat, the majority of them are in fact poor and in need except maybe some administrators, those whose hearts are reconciled, debtors and those who are fighting for the cause of Allah.⁶⁰²

Hence, it can be concluded that prevalence among the classical jurists is the view that zakat should be disbursed preferably to the poor. This is in consonant with the main objective of zakat which is to mitigate the need of the poor if not to enrich them.

The practices at the Malaysian zakat institutions also indicate the adaptation of the same philosophy as above. Zakat proceeds are not necessarily disbursed equally among the groups of recipients. The amount of distribution varies according to the needs and welfare of the recipients, as well as according to the different economic and social conditions in each state.⁶⁰³ The *fatwā* issued by the state of Selangor in 1994, for example, clearly states that in distributing the zakat, the allocations for each group is

⁶⁰⁰ Al-Azhari, *Jawāhir al-Iklīl*, v. 1, 140.

⁶⁰¹ Al-Shāfi'i, *Kitāb al-Umm*, v. 3, 192-3; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 186-93.

⁶⁰² Al-Bahūfī, *Kashshāf al-Qinā'*, v. 2, 285. For those who view that debtors are those whose debts are greater than their assets, this group also is in fact included among the poor and in need.

⁶⁰³ Mahmood Zuhdi Abdul Majid, *Pengurusan Zakat* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2003), 483; Mohd Parid Shaikh Ahmad, "Kaedah Pengagihan Dana Zakat: Satu Perspektif Islam", in *Kaedah Pengagihan Dana Zakat: Satu Perspektif Islam*, ed. by Nik Hassan, Nik Mustapha (Kuala Lumpur: IKIM, 2001), 26.

not necessarily equal. The Majlis Agama Islam Selangor or its representative is given the right to divide the zakat according to their discretion.⁶⁰⁴

5.5 Sharing of Benefits with Non-Recipients

In investing zakat, some of the investment projects, particularly those oriented towards mass utility and service like hospitals and schools, would undoubtedly attract other users aside from the deserving recipients of zakat. This part will examine the problem when zakat is paid or, in the case of zakat investment, is benefited by other than the recipients of zakat. In order to understand this, the study will examine those who are considered as non-recipients of zakat and the consequences that entailed when zakat is paid to them instead of the rightful recipients.

5.5.1 The Non-Recipients

5.5.1.a The Affluent

There is a unanimous agreement among jurists that one who is wealthy is not entitled to receive zakat. The exclusion of a wealthy person from receiving zakat may be found in many hadiths, among which is the hadith about the Prophet's directive to Mu'ādh when he was sent to Yemen and a hadith narrated by 'Adī bin al-Khiyār about two men who requested zakat from the Prophet. The Messenger of God replied that, "...if you

⁶⁰⁴ *Fatwā* issued by Selangor and was gazetted on 29 August 1994. See Rujukan Pewartaan: Sel. P.U 130, www.e-fatwa.gov.my (accessed on 3 July 2008).

wish, I shall give you something, but there is nothing spare in it for a rich man or for one who is strong and able to earn a living.⁶⁰⁵

The jurists disagree, however, with respect to the amount of wealth one owns which will exclude one from entitlement to zakat. For Ibn Ḥanbal and his followers, the rich who cannot receive zakat are those who own 50 dirham or its value in gold, or own something that may able him to earn *kifāya* consistently either in the form of ability, trade, real estate, etc. If he owns zakatable wealth that does not attain the level of *kifāya*, even if it reaches the level of *niṣāb*, he will not be considered to be rich. This is based on a good (*ḥasan*) hadith narrated by Abū Dāwud and al-Tirmizī where the Prophet was asked to define who is considered as rich and cannot receive gifts, and he defines him as one who owns 50 dirham or its value in gold.⁶⁰⁶

Some jurists, commenting on the above hadith and other hadith that stated a fixed amount of wealth as the level of *kifāya*, state that the fixed amount mentioned in the hadiths implies the variability of the amount of wealth in determining an affluent person. The main indicator of wealth is a substantially sufficient amount to satisfy essential needs for the person at the time of the Prophet.⁶⁰⁷ Thus, any average amount that could fulfil a person's essential needs at a point of time can be considered as a measure to recognize affluence.

Al-Shāfi'ī and the Mālikīs hold that the limit is *kifāya*, that is the state where a person is no longer in need of zakat, even if he owns nothing or his wealth does not reach the *niṣāb* or its value. In describing this further, al-Shāfi'ī maintains that one who has

⁶⁰⁵ Al-Sijistānī, *Sunan Abī Dāwud*, trans., hadith no. 1629, 428. The hadith was considered good (*ḥasan*). See Ibn Qudāma, *al-Mughnī*, v. 2, 523; al-Shāfi'ī, *Kitāb al-Umm*, v. 3, 186.

⁶⁰⁶ Ibn Qudāma, *al-Mughnī*, v. 2, 523; al-Sijistānī, *Sunan Abī Dāwud*, trans., hadith no. 1626, v. 2, 116; al-Tirmidhī, *Sunan al-Tirmidhī*, hadith no. 646, v. 2, 81.

⁶⁰⁷ Ḥamd ibn Muḥammad al-Khaṭṭābī, *Ma'ālim al-Sunan*, v. 2, (Ḥalab: Maṭba'at Muḥammad Rāghib al-Ṭabbākh, 1932), 56-8.

insufficient wealth but has the ability to earn enough income for himself and his dependants is someone who is rich.⁶⁰⁸ For Mālik, he believes that there is no specific limit on *kifāya* except that it should provide a person with the essential things that a man should have such as a place to stay, helper, and transport. The limit may vary from person to person and should be based on the ruler's legal interpretation (*ijtihād*).⁶⁰⁹

In contrast, the Hanafis describe an affluent as one who owns *niṣāb* based on the hadith about Mu'adh's journey to Yemen, which asks him to collect zakat from the rich and distribute it to the poor. Since the attribute to recognize a rich person is one who owns a *niṣāb*, then the person who is poor should be one who does not own it.⁶¹⁰

5.5.1.b The Non-Believer

The jurists are in agreement that it is not permitted to pay zakat to a non-believer. This is based on the hadith narrated by Ibn 'Abbās that the Prophet (p.b.u.h.) said to Mu'adh when he was sending him to Yemen to collect and disburse zakat from those who alleged their obedience to God only.⁶¹¹

⁶⁰⁸ Al-Shāfi'ī, *Kitāb al-Umm*, v. 3, 186.

⁶⁰⁹ Sahnūn, *al-Mudawwana*, v. 1, 342.

⁶¹⁰ Ibn Qudāma, *al-Mughnī*, v. 2, 523-4; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 321.

⁶¹¹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, v. 2, hadith no. 102, 109; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 184; Ibn 'Ābidīn, *Radd al-Mukhtār*, v. 3, 301; Ibn Qudāma, *al-Mughnī*, v. 2, 517.

1.1.1.1 5.5.1.c The Family of The Prophet

These are the descendants of Hāshim and ʿAbd al-Muṭṭalib except those who has been dismissed from the lineage.⁶¹²

1.1.1.2 5.5.1.d Those That Are Under a Payer's Legal Responsibility (*Nafaqa*);

There is a consensus among the jurists that zakat cannot be paid to a payer's dependants, including wives, ancestors, descendants and slaves.⁶¹³

1.1.1.3 5.5.1.e The Ruler

This includes any ruler and administrator whose tasks encompass not only zakat management but also other responsibilities.⁶¹⁴

5.5.2 Consequences of Sharing Zakat with Non-Recipients

As noted above, zakat cannot be paid to other than the designated recipients of zakat.⁶¹⁵ The ruling (*ḥukm*) is clearly stated by a hadith narrated by Abū Dawūd that a man asked the Prophet for a portion from the *ṣadaqa*. The Messenger of God said to him, "God did not leave the *ṣadaqa* to the *ḥukm* of a prophet or anyone else, but He has laid

⁶¹² Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 184; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 12; Ibn Qudāma, *al-Mughnī*, v. 2, 519-20.

⁶¹³ Sahnūn, *al-Mudawwana*, v. 1, 344-5; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 11-12.

⁶¹⁴ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 175.

⁶¹⁵ Al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 95; Abū ʿUbayd, *al-Amwāl*, v. 4, 577; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10.

down a *ḥukm* Himself. He has divided the persons entitled into eight categories, so if you are in one of these categories, I will give you your rights”.⁶¹⁶

The *ḥukm* is such that the jurists claimed that even if an owner or his representative paid to someone who is not a recipient, due to doubt of his status, and the recipient is unable to return it, the act is considered unacceptable. If he is able to return it, the payer should take the zakat or its value from him. Furthermore, the payer has to replace any of the unreturned amounts.⁶¹⁷ The majority of Ḥanafis, however, hold that zakat is accepted even if paid to someone rich, given that at the time of payment the payer thought that he belonged to the recipients. But for al-Shāfiʿī, the zakat is unaccounted because later evidence proves that the act is incorrect.⁶¹⁸ An exception, however, is granted when zakat is paid to those who are determined by the ruler because he is considered as a representative of the recipients thus making the payment a complete one.⁶¹⁹

Contemporary scholars like Zayas and al-Amīn hold that in cases where zakat funds cannot be avoided from also being used by non-recipients, the utilized amount must be replaced with other funds like provisions from the state or private donations. If non-recipients can afford the replacement, then fees or charges can also be imposed on them.⁶²⁰

⁶¹⁶ Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320.

⁶¹⁷ Al-Azhari, *Jawāhir al-Iklil*, v. 1, 141; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 199.

⁶¹⁸ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 12-3.

⁶¹⁹ Al-Azhari, *Jawāhir al-Iklil*, v. 1, 141; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 199.

⁶²⁰ Al-Amīn, “Tawḍīf al-Zakā fi Mashārīc Zāt Riḥ Dūna Tamlik Fardiy li al-Mustaḥiq”, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 364; Zayas, *The Law and Institution of Zakat*, 354. Farishta G de Zayas authored many works on zakat. The most well known is his work, *The Law and Institution of Zakat* first published in 1960. His other works on zakat include “The Functional Role of Zakat in the Islamic Social Economy”, *Islamic Literature*, 15: 2 (March 1969), 5-10; “Tithe Lands, Kharaj Lands and the Law of Zakat”, *Islamic Literature*, 13: 5 (May 1967), 5-9, “The Islamic Concept on Charity”, *Islamic Literature*, 16: 2 (1970), 609-18.

5.6 Conclusion

There are three parties that have an access to zakat; the owner of zakatable wealth, the recipients and the state as an intermediary between the first two parties. From these three parties, the state has been shown to be the most viable manager of zakat investment given its vast authority on the collection and distribution of zakat apart from its authority on public wealth and order.

Given that zakat investment involved zakat which must be paid to the recipients of zakat, the state in managing the zakat investment activities must observe several principles that are outlined to ensure that payment and distribution of zakat are fully and rightfully performed.

One of these principles is the necessity to immediately pay the zakat to the recipients. The majority of classical jurists insist that the payment of zakat must be instantly made by the owner of zakatable wealth once all the prerequisites to pay zakat are fulfilled. Failures to observe this principle carries both religious and financial consequences. The study however noted that the jurists still allow some room for delay given circumstances that may benefit either the payer or the designated recipients. This suggests that in the case of zakat investment, if the investment can be proven or found beneficial to the recipients compared to the typical distribution to fulfill the recipients' consumption need only, then the state is allowed to proceed with the investment. Similarly, the state could also delay the distribution of zakat (this could include investing the zakat) if the delay is unavoidable.

The second legal issue that concerns zakat investment is the requirement by the majority of classical jurists that ownership of zakat is fully transferred to the individual recipients. This requirement will restrict many types of zakat investment that

necessitate a centralized control and huge expenditures. Modern jurists argue that *tamlīk* in the payment of zakat should not be limited to concession of full zakat ownerships to individual recipients only. According to them, this *tamlīk* should be reviewed and extended to relative, beneficial and collective ownerships given that these types of ownership in certain circumstances are more beneficial to public interest. If zakat investment is to become an important mechanism in distributing zakat and reducing poverty, the study supports the modern jurists' view and suggests that the requirement that a full transfer of zakat to individual recipient is reconsidered.

Islamic law also requires that zakat must be spent on eight groups of recipients only. The above discussions reveal that the majority of jurists do not insist that the distribution must be paid to all groups of recipients or must be equally distributed to all of these groups. Only the Shāfi'īs oblige that zakat is equally distributed among these groups of recipients. The significance of the view of the majority of jurists is that in allocating zakat for investment and its beneficiaries, the state can choose to distribute zakat to selected groups of recipients only based on need. The state may choose not to disburse all of the zakat revenue if it concludes that this action is more beneficial to the recipients and is more nearer to fulfil the purposes of zakat. Based on need also, the state has the right to allocate more zakat for investment to a certain group compared to others. In investing zakat, the study maintains that the view of the majority of jurists is more fitting considering that not all of the groups of recipients are worthy of zakat investment.

Another issue of concern if investment of zakat is to be undertaken is the sharing of the benefits with the non-recipients. As noted above, zakat is an exclusive right of the eight groups of recipients only and payment of zakat to other than these groups is considered legally invalid. Thus it is pertinent that in investing zakat, the responsible zakat manager has to ensure that the benefits are reaped by the recipients of zakat only.

In the next chapter, the study will continue with further discussion about the legal issues that concern zakat investment as raised by Muslim scholars.

Chapter Six

Islamic Legal Issues in Financing Zakat Investment

6.0 Introduction

Financing an investment relates to sourcing funds to finance investment projects, selecting the forms of financing to be employed and allocating the available funds to ensure the achievement of the investment purposes. Financing an investment for economic development, for example, relates to the provision of real resources in developmental projects to raise the level of real output and living standards in developing countries.⁶²¹

In investment of zakat as in any type of investment, the amount of financing is very important since it determines the depth and the breadth of the investment projects. The amount of financing that can be raised to finance investment projects depends on the possibility of utilizing zakat to finance investment projects. Allocation of zakat for investment from the collected zakat is very much affected by the Islamically accepted views among jurists regarding the amount of zakat allocation among the groups of recipients, the allowance to allocate more than the recipients' consumptive needs and

⁶²¹ A.P. Thirwall, *Financing Economic Development* (Essex: The Anchor Press, 1976), 11.

the acceptance of a wider definition of the *fī sabīl li Allāh* group.⁶²² Allocation for zakat investment from zakat funds can be sourced from specifically allocated zakat meant for investment purposes and excess of distribution from the total collection of zakat. Allocations can also be sourced from transfer of zakat from other states which have surpluses of zakat, advance payment of zakat made by the zakatable wealth owners or zakat loans.⁶²³

Zakat investment can also be financed from sources other than zakat.⁶²⁴ It is well established that the benefits of long-term projects cannot be reaped immediately, and in some cases, very large capital is needed to fund the projects. In these circumstances, the projects' initial capitals can be funded by sources other than zakat. External financing might be used because of shortages of zakat at that time or to avoid delaying zakat payment to the recipients. In this type of financing, projects can be initially funded partly or wholly by other sources, and future zakat collections will be used to repay them. Financing investment of zakat with other sources can take many forms as long as it conforms to Islamic law.⁶²⁵

Financing zakat investment also relates to the methods used in allocating zakat to the recipients. Allocations of zakat are known to be made in cash, kind and services. There is also the possibility that the allocations can be made in a lump sum amount or in batches like when employing the method of *mushāraka mutanāqīsha*, or even given as loans instead of free allocations.⁶²⁶ It is important that the methods used to pay zakat are flexible to ease the planning and execution of the investment projects.

⁶²² Al-Qaradāwī, *Fiqh al-Zakā*, v. 2, 644-52.

⁶²³ Al-Fādanī, "Tamwīl al-Mashrū'āt al-Intājiyya wa Tamlikuhā li al-Mustaḥiqqīn: Al-Sūdān"; Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 100-42.

⁶²⁴ Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 20.

⁶²⁵ *Fatwā* of the Sharī'a Committee of Bayt al-Zakat of Kuwait, concluded in its 30th Meeting 1986. Bayt al-Zakā, *Abḥath wa A'māl al-Nadwa al-Thālitha li Qaḍāyā al-Zakāt al-Mu'āṣira*, 323.

⁶²⁶ Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 110-26; 143-9.

Another key element in financing an investment of zakat is the inherent risk of reduction or loss of zakat used to fund the investment projects. Any reduction incurred means that the amount paid by an owner will be lower than the obliged amount, while in cases of total loss, there is a possibility that the payment will not take place at all.⁶²⁷ Since payment of zakat must be paid and transferred fully to the recipients, it is pertinent to analyze the legal concepts pertaining to the management of this type of risk.

This chapter is the second of two chapters that examine the legal issues surrounding investments of zakat. In the previous chapter, the study examined the legal issues in the management of zakat investment. This chapter deals with the above financial aspects of zakat investment. The first part of the chapter examines the legal concepts which influence the modes by which zakat can be allocated for investment. These include allocation of zakat to each group and individual recipients, treatments on excess of zakat revenue, interpretation of the term *fī sabīl li Allāh*, transfer and advance payment of zakat, and zakat loans. The second part of the chapter looks at the methods of payments of zakat, whether it is possible to invest the value of zakat instead of the zakat that is paid in kind. Next, the chapter examines jurists' views regarding the reduction and loss incurred in the distribution of zakat. And lastly, before concluding the examination of these financial issues, the chapter discusses the possibilities of utilizing other sources than zakat to finance zakat related investment projects.

Again, the *Sharī'a* view of all the above is important considering that zakat is an act of worship, and a breach of Islamic law in utilizing zakat to finance the investment projects will mean that the obligation performed will be jeopardized. In discussing these concepts, views from both classical and contemporary Muslims scholars will be

⁶²⁷ Resolution No. (3) d 3/07/86, in Mu'tamar Majma' al-Fiqh al-Islāmī, *Majalla Majma' al-Fiqh*, v. 3, part 1, 421; Muḥammad Farah, *al-Tawjīh al-Istithmārī li al-Zakā*, 42; See Bayt al-Tamwīl al-Kuwaytī, *al-Fatāwā al-Sharīyya fī al-Masā'il al-Iqtisādiyya*, 309.

discussed and analysed. The actual practices that take place at the zakat institutions in Malaysia and other countries are also highlighted and examined to present a more accurate and contemporary outlook on the financial aspects of zakat investment.

6.1 Allocations of Zakat

Instances of how zakat should be allocated among the recipients of zakat are abundant in the classical books of *fiqh*. Emphasis is normally given to three main issues of allocation: Should zakat be allocated to all of the groups of recipients? How much allocation should be given to a group of recipients? And, how much zakat is a recipient entitled to?

In this part, the study examines the views of classical jurists regarding the allocation of zakat among the groups of recipients and also to each individual recipient. Insights into the Islamic legal views regarding the allocation of zakat are important for understanding and seeking possible mechanisms to allocate zakat for investment. Some recent examples are also discussed to provide more recent practices in allocating zakat to the recipients. At the end of this part, the study examines allocation of zakat for investment in a modern and organized zakat institution where distribution is made prior to the actual collection revenue. Given that the budgeting process is part of the institution's strategic planning, the study attempts to understand how this process affects the allocation of zakat investment from the Islamic legal perspective.

6.1.1 Allocations of Zakat among the Groups of Recipients

On the distribution of zakat, jurists are unanimous that if the *‘āmilūn* are involved in the collection of zakat, they should be paid first from the zakat revenue in exchange for

their works.⁶²⁸ The distribution for the rest of the recipients in general, however, is encouraged to be based on the recipients' level of need.

For the Shāfi'īs, the zakat institution must first spend the revenue to pay the *ʿāmilūn*'s remuneration with the condition that the allocation for them cannot exceed one eighth of the revenue. The balance after the payment to *ʿāmilūn* shall be distributed equally among the rest of the groups of recipients, even in cases where one group's need is more demanding. For any group whose allocation exceeds its members' needs, the surplus must be equally distributed to other groups of recipients. The institution will then have to allocate the amount received by each group to its entire membership and according to each member's need.⁶²⁹

If the amount allocated to the group is not sufficient to fulfil the need of all the members of the group, then each member will be given the same proportion of zakat from the total allocated to the group. As an example, say that there are 100 *fuqarā'* eligible for zakat, and the available zakat for allocation for *fuqarā'* out of the total zakat revenue is RM4,500. Say that twenty of the *fuqarā'* needs RM50 each to fulfil their needs, and the rest needs RM100 each, or, in total, they need RM9,000 to alleviate themselves from poverty. From the zakat revenue, each of them will receive half of the amount of their need where the first twenty of *fuqarā'* will receive RM25 each and the rest will receive RM50 each.⁶³⁰ But if the amount of zakat allocated to his group is sufficient to cover the need of all the members of the group, then each individual will receive the amount of zakat that can cover his need.⁶³¹

⁶²⁸ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 708; al-Qarāfī, *al-Dhakhīra*, v. 3, 150.

⁶²⁹ Al-Shāfi'ī, *al-Umm*, v. 3, 189; al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 167; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 192-3. The proportion is derived by dividing the available amount for a group over the total amount needed by the group.

⁶³⁰ This is an elaboration of an example given by al-Shāfi'ī in dividing an allocation for the *ghārimūn* whose total need exceeds their group's portion from the total zakat revenue. Al-Shāfi'ī, *al-Umm*, v. 3, 193.

⁶³¹ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 205-6.

In a nutshell, the Shāfi'īs insist on ensuring that all of the groups mentioned in the Quran receive their equal portions of zakat. As for the individuals among the group, in the event that zakat is abundant, then allocations for each individual may vary according to each need. In cases where the zakat revenue is insufficient to fulfil the need of all of the individual recipients in the group, they emphasize not on the equal amount of allocations for each individual but the equal proportions received by each one of them. In the allocation of zakat, all recipients of zakat will have a right to zakat revenue.

In contrast, for the majority of jurists, allocations are basically left to the discretion of the ruler. He may decide to allocate zakat to certain groups of recipients only or to favour certain groups above others. Nevertheless, the level of need of the recipients should guide the allocations.⁶³² Mālik, Aḥmad ibn Ḥanbal and the Ḥanafīs hold that a ruler is allowed to spend the entire zakat on a group or selected groups of recipients only if the need arises.⁶³³ Abū 'Ubayd states that some jurists insist that allocations for all groups of recipients should only be conducted when zakat revenue is in abundance. When it is limited, allocation to a group will be sufficient.⁶³⁴

Even though the majority of jurists maintain that some groups may receive more than others according to social priorities, and most of them accord a very high priority to the poor and the needy for their demanding needs, they still insist that no category that exists should be ignored altogether if they too need zakat. Therefore, even according to the opinions most favourable to the poor, the whole amount of zakat must not be transferred only to the poor.

⁶³² Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 319-20; al-Qarāfi, *al-Dhakhira*, v. 3, 150.

⁶³³ Sahnūn, *al-Mudawwana*, v. 1, 342; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 320; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10-11.

⁶³⁴ Abū 'Ubayd, *Kitāb al-Amwāl*, 577.

A recent example of where a state or its representative favoured one group above the others is the decision made by the Dīwān al-Zakā of Sudan to provide or reserve 63 percent of its zakat revenue to the *fuqarāʾ* and *masākīn* groups, considering the widespread poverty in the country.⁶³⁵

The disagreement between the Shāfiʿīs and the majority of jurists arises from the conflict regarding verse 60 of *Sūra* al-Tawba. The verse reads,

“The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer; a duty imposed by Allah. Allah is Knower, Wise.”

They disagree whether the allocation of zakat to the outlined groups of recipients in the verse shall be interpreted literally or according to the implied meaning of the verse. The Shāfiʿīs, who maintain that the allocation of zakat should follow the literal meaning of the verse, insist that zakat should be equally distributed among the available groups. But the majority of jurists maintain that the description of the recipients as outlined in the verse is meant only as a guide to differentiate between different categories of recipients entitled to receive zakat. The verse’s main aim is to impart the underlying cause of distribution which is the elimination of wants.⁶³⁶ Hence the listing of the eight groups does not necessarily mean that each group has a right upon the zakat. Only the group of recipients that need zakat deserves an allocation of zakat.⁶³⁷

In Malaysia, the MAINs in allocating zakat among the groups of recipients are inclined to favour the view of the majority of jurists. A decree by the state of Selangor

⁶³⁵ See Dīwān al-Zakāt al-Sūdānī, “Tajribat Dīwān al-Zakā fī Takhfif Hiddat al-Faqr”, retrieved from <http://www.zakat-sudan.org> on 10 March 2009. See similar specific allocation made by the board (Dīwān al-Zakat al-Sūdān) in al-Tayīb Zein al-Abidin, “Zakat and the Alleviation of Poverty in the Muslim World”, *Hamdard Islamicus*, 20: 2 (1997), 80. Similar treatment was undertaken by the General Department of Zakah in Libya, see al-Omar, “General, Administrative and Organizational Aspects”, in *Institutional Framework of Zakah*, 45.

⁶³⁶ Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 319-20.

⁶³⁷ Ibn al-Humām, *Sharḥ Fath al-Qadīr*, v. 2, 270.

exemplifies this when it maintains that it is not an obligation of the Majlis Agama Islam Selangor (MAIS) to distribute equally between each group or among the members in each group. The right to determine the amount of distribution for each recipient is at the discretion of the MAIS or his representative.⁶³⁸ This view is also supported by some Malaysian scholars who maintain that zakat proceeds are not necessarily disbursed equally among the groups but depend on the needs and welfare of the recipients as well as taking into account the differences in their states' economic and social conditions.⁶³⁹

6.1.2 The Maximum Amount of Zakat to Each of the Recipient

Among classical jurists there are several views regarding the amount of zakat that each of the recipients is entitled to. Generally, each recipient's entitlement to zakat depends on the level of his need.

For the *fuqarā'* and *masākīn*, there are three main views regarding the maximum amount of zakat that each of them is entitled to or what can be considered as fulfilling their needs. According to the Shāfi'īs, zakat given to each of the *fuqarā'* and *masākīn* can amount to the level which can fulfil their lifetime need (*kifāyat al-ʿumr*). This is an amount that will ensure that they would no longer be in need of zakat in the future. They propose an amount that may cover their future basic needs and may assist their ability to generate the income needed to pay for their future costs of living, such as tools for crafts, capital for trade or land for cultivation.⁶⁴⁰ In describing the amount that

⁶³⁸ *Fatwā* issued by Selangor and was gazetted on 29 August 1994. See Rujukan Pewartaan: Sel. P.U 130, accessed from www.e-fatwa.gov.my on July 2008.

⁶³⁹ Mahmood Zuhdi, *Pengurusan Zakat*, 483; Mohamed Dahan Abdul Latif, "Pendekatan kepada Cara Pengagihan Dana Zakat yang Dinamik Sesuai dengan Suasana Semasa", in *Kaedah Pengagihan Zakat: Satu Perspektif Islam*, ed. Nik Mustapha Nik Hassan (Kuala Lumpur: IKIM, 2001), 42-3.

⁶⁴⁰ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 176.

can fulfil the *kifāyat al-ʿumr*, al-Ramlī maintains that zakat provided to the needy does not necessarily amount to the total needed for the rest of their life. Some provisions which enable them to earn their future maintenance would be considered sufficient—for example, capital investment whose returns could cover their needs—provided that the ownership of the property is transferred to them and can be bequeathed to their heirs.⁶⁴¹ Al-Nawawī, in describing the amount of zakat that can assist the recipient's work, says, "... the amount that should be given to a poor recipient (in assisting his job) is the amount that can provide him with enough profits to fulfil his immediate need".⁶⁴² He also says, "Capability of doing some work of labour means that the work is of his standard and not that which is below his status."⁶⁴³ This shows that a healthy person capable of doing some work must be given enough zakat that enables him to work and earn an income of his standard of living. For the poor who was found to possess the capability to excel in entrepreneurship, for example, sufficient capital could be given to start and operate an enterprise.

According to the Mālikīs and the majority of Hanbalīs, the amount paid to the poor recipients should be limited to an amount needed by an individual and his family to fulfil their needs for a year.⁶⁴⁴ Al-Qaraḍāwī maintains that a yearly provision is chosen because zakat is normally paid once a year, and each year needs can be replenished by

⁶⁴¹ Shams al-Dīn Muḥammad ibn Aḥmad al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj fī al-Fiqh ʿalā Madhhab al-Imām al-Shāfiʿī*, v. 3 (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), v. 6, 152, 155. Al-Ramlī was born in Ramlah, a village near Manufiyyah in Egypt, in 919H. He was the son of a famous Shafiʿi jurist and mufti, Shihāb al-Dīn Aḥmad al-Ramlī. His teachers include his father, Shaykh al-Islām Zakariyyā al-Anṣārī and al-Khāṭib al-Shirbīnī. He was the successor of his father as the chief Shāfiʿis mufti in Egypt. He died in 1004H.

⁶⁴² Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 176.

⁶⁴³ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 171.

⁶⁴⁴ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 703; al-Bahūfī, *Kashshāf al-Qināʿ*, v. 2, 284; al-Qarāfī, *al-Dhakhīra*, v. 3, 149.

zakat of that year. This was based on the practice of the Prophet who kept in store a year's provision for his family.⁶⁴⁵

Both of the above views do not put a maximum limit on the amount of zakat that can be disbursed to the *fuqarā'* and *masākīn*. The maximum amount that they are entitled to, whether for their *kifāyat al-ʿumr* or one year sustenance, depends on the prevalent amount that can fulfil their need.

The Ḥanafis, on the other hand, put up a certain limit of zakat that a recipient is entitled to. Abū Ḥanīfa and his followers discourage payment of zakat that is equivalent to two hundred dirhams or more to any poor and needy individual recipient. This is the amount of *niṣāb* which is an indicator that differentiates between a *faqīr* or a *miskīn* and an affluent person.⁶⁴⁶

For the other recipients, their allocations of zakat, according to the classical jurists, are basically based on their needs. Both the *riqāb* and the *ghārimūn* are entitled only to an amount that can settle their bondage and debt. Similarly for the *ibn al-sabīl*, they are entitled to the amount of money that is needed to cover their lacking journey expenses. The only difference would be the *ʿāmilūn*, where their entitlement to zakat will be enumerated based on the standard pay of similar services received by other workers.⁶⁴⁷

Hence, it can be concluded that allocation of zakat to the individual recipient among the classical jurists, in general, depends on his level of need as well as the amount of collection of zakat that is available to be disbursed.

⁶⁴⁵ Al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 567.

⁶⁴⁶ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 13-14; Ibn ʿĀbidīn, *Radd al-Mukhtār*, v. 3, 303.

⁶⁴⁷ Ibn Qudāma, *al-Mughnī*, v. 2, 530; al-Qarāfī, *al-Dhakhīra*, v. 3, 149. Allocation of zakat to the group of *fi sabīl li Allāh* will be discussed in details in 6.3.

6.1.3 Allocation of Zakat for Investment among the Classical Jurists

As noted previously, investment of zakat has not been discussed explicitly by classical jurists. However, based on the above views of classical jurists regarding the allocation of zakat to groups of recipients and to each individual recipient, several deductions can be made on the possible allocation of zakat for investment.

If the Shāfi'īs' view regarding the allocation of zakat is to be adapted to financing zakat investment, there would be three implications. First is that all of the recipients' needs can only be fulfilled when zakat is in abundance and can fulfil all the recipients' need. In this situation, allocations for investment can be made alongside allocations to fulfil consumption needs, like for the recipients' basic needs and their functional needs such as the remuneration of administrators of zakat (*ʿāmilūn*), settlement of debt for debtors (*ghārimūn*), and assistances given to those in enslavement (*al-riqāb*) and travellers (*ibn al-sabīl*).

Secondly, where zakat is insufficient to fulfil all of the recipients' needs, the need of the members from the same group cannot be forsaken to provide an amount greater than the allowed proportion to the rest of the members in the same group. This is so because each individual member has a right to receive an equal proportion of the total zakat available. Since the fulfilment of an individual need will depend on the amount available for his group and also the cumulative needs of all the members of the group, the higher the amount needed by the group compared to the available amount, the less zakat each individual from the group will receive. In other words, the less the amount of zakat available compared to the level of need, the higher the tendency that the allocation of zakat will be used to fulfil the most demanding need of the recipients. In this situation, allocation made for the *faqīr* and *miskīn* will tend to be spent on fulfilling their most demanding needs which are their basic needs. Allocations for investment can be made when more than enough zakat is available at least to fulfil the recipients' basic needs.

Thirdly, surpluses of zakat from a group or groups whose recipients' needs are fulfilled are not necessarily available for investment since they have to be channelled and divided equally to the other groups with deficit input. Thus surpluses of zakat from a group must first be used to cover other groups' needs. Only when all of the recipients' basic and functional needs are fulfilled will the surpluses become available for investment.

While among other classical jurists allocations for investment are highly probable during both times whether zakat is in abundance or in deficit to fulfil all the recipients' need. This is because the rulers or their representatives are given the authority to decide the amount of zakat to be allocated to the groups of recipients. Given that allocation of zakat is based on the recipients' need, allocation for investment is only possible if investment is considered as a type of need that must be fulfilled for the recipients. The only other constraint is the amount of zakat available for distribution. If the amount of zakat revenue is sufficient only to fulfil the consumptive and functional needs of the recipients, then it is very unlikely that allocation will be made for investment.

All in all it shows that even though there are views among classical jurists which allow zakat investment, the types and scopes of investment are to a certain extent limited. For the majority of classical jurists, even though they provide the state with the authority to pay zakat to some selected recipients only, the allocation for investment is only possible if investment is considered as a type of need that must be fulfilled for the recipients. The allocation for investment also is only possible when the collected zakat is in abundance and can fulfil the consumptive and functional needs of the recipients. Even though provision for investment is allowed by the Shāfi'īs and some Hanbalīs in the allocation of zakat to the *fuqarā'* and *masākīn* besides from their consumptive needs, it is limited for the acquisition of working tools and assets that can assist the individual recipients to generate their future income. The investment assets are also required to be

fully transferred to the individual recipients. As for the other recipients, allocation of zakat for investment is not really necessary since their needs are mostly functional needs which have to be fulfilled immediately and do not require an investment for their future benefits.

6.1.4 Allocation of Zakat for Investment in a Modern Zakat Institution

From the above discussion also, it is noted that, in allocating zakat, the classical jurists based their views on the available amount of zakat revenue. In the modern world, however, particularly when the zakat institution is centralized, structured and managed as a modern organization, the allocation of zakat is normally made well in advance of its revenue. This is because any typical modern organization will define and plan in advance its strategy or direction. One of the key elements in planning the organizational strategy is the allocation of its resources. Estimation of both the amount of expenses in the future and the expected revenue which can be generated and cover the expenses becomes part of the necessary strategic financial planning of the organization.⁶⁴⁸

Similar planning occurs in a modern zakat institution that manages zakat, where allocations of zakat no longer awaits the zakat revenue but are made well in advance of the real revenue. Through this process known as budgeting,⁶⁴⁹ the zakat institution will plan how the expected zakat revenue for a particular period will be allocated and utilized.

⁶⁴⁸ See John M. Bryson, *Strategic Planning for Public and Non-profit Organizations* (London: Jossey-Bass Publishers, 1989), 5.

⁶⁴⁹ Budgeting or a budget process refers to the process by which an organization identifies and plans the financial resources required to achieve its programmatic objectives. Aaron Wildavsky, *Budgeting. A Comparative Theory of Budgeting Processes* (New Brunswick: Transaction Books, 1986), 1-2, 7-8.

In Malaysia, the MAINs are required to prepare their annual budgets comprising their revenues and the expenditures before the end of the year, normally no later than the 31st of October. The budgets will then be endorsed by the ruler of the state and gazetted. As such, all of the expenditures for the following year have been planned in advance according to the revenue estimation. According to the states' Islamic law enactments, the actual expenditures later on must also, in general, be made in accordance to this budget.⁶⁵⁰

In planning the allocations of zakat for investment, there are several methods employed by modern zakat institutions. There are also several other suggestions made by Muslim scholars. Modern zakat institutions allocate zakat for investment through distribution of zakat via the groups of recipients and also through undistributed zakat revenue. There are two ways that the allocations for investment via the groups of recipients are made. First is that the allocations are made based on the expected need of each group. In Lembaga Zakat Selangor, a zakat institution for the state of Selangor in Malaysia, Department of Asnaf Development, the department responsible for the capital assistance scheme provided for the *fuqarā'* and *masākīn* will forecast the amount that will be disbursed as capital assistance. This amount will be combined with the other proposed budgets by other departments into one main budget. The process starts in June each year and ends in October. The expected allocations for investment, like the above capital assistance scheme, is not fixed to a certain amount but based on the recipients' applications as well as the department's decision.⁶⁵¹

Second, the allocations for investment are made by fixing a specific retention ratio from the total distributed zakat to each of the groups of recipients. The Dīwān al-Zakā of Sudan allocated on average 60% of its revenue to the *fuqarā'* and *masākīn*. It allocated

⁶⁵⁰ See for examples Sec. 69, Administration of Islamic Law Act (Federal Territories) 1993; Sec. 82, Administration of Islamic Law Enactment (Selangor) 2003.

⁶⁵¹ Interview with Aidi Munawir Ahmed Shukri, Deputy Chief Manager (Management) and Head of Finance Department, Lembaga Zakat Selangor, 22 Jan. 2009.

40% of this portion specifically to assist them to earn their own living, and the rest was spent for food, healthcare, shelter, etc.⁶⁵²

Modern zakat institutions also fund zakat investment from undistributed zakat revenue. The allocations can either be made from the available excess of zakat revenue or from a purposely retained amount allocated specifically for investment. In Pakistan, not all of the zakat revenue is distributed by the Central Zakat Fund. Some portion of the zakat proceeds is retained for investment in non-interest basis investment vehicles.⁶⁵³

There are also other methods of allocations suggested by Muslim scholars. Muḥammad Farah suggests that allocations for investment should be specifically made in the zakat institution's budget. The suggestion is that a certain percentage of zakat revenue will be specifically allocated to fulfil the investment need of the recipients, besides from the typical allocations for their consumptive and functional purposes.⁶⁵⁴ A good example is the retaining of 20% of zakat revenue to invest in real properties which will earn rents for the zakat fund, and only the rest of the revenue will be distributed to the recipients. This type of allocation, according to Muḥammad Farah, is best made when the revenue is expected to exceed the amount needed to fulfil the recipients' needs. The reason for this requirement as described by Muḥammad Farah is that the recipients' rights may be affected when such allocation is made without the presence of an excess.⁶⁵⁵ This is

⁶⁵² Dīwān al-Zakā Al-Sūdānī, "Tajribat Dīwān al-Zakā fī Takhfīf Hiddat al-Faqr", <http://www.zakat-sudan.org> (accessed on 10 March 2009). There was no specific date mentioned, but the article was posted by the chamber on 2 Jan. 2006.

⁶⁵³ See Clark, "Pakistan's Zakat and Ushr System from 1979 to 1999", 150.

⁶⁵⁴ Muḥammad Farah cautions that this method of financing will sometimes affect the recipients and is better used as a supplementary method of financing especially during which the recipients need is not very demanding. Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā: Dirāsat Iqtisādiyyat Fiqhiyyat Taḥlīliyyat Muqārana*, 105. The same idea also was suggested by Pramanik. See Pramanik, *Development and Distribution in Islam*, 17-8.

⁶⁵⁵ Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 105.

because some recipients' basic needs will have to be forsaken to allocate zakat for investment activities.

According to Abdul Jalil, a specific allocation for investment can be made by retaining a specific portion of zakat revenue from distribution. He suggests holding the allocations made for specific groups of recipients like for the groups of *ghārimūn*, *riqāb*, *mu'allafat qulūbuhum*, *ibn al-sabīl* and *fī sabīl li Allāh*. The retained amount can be invested, and only the benefits of the investment will be later disbursed to them.⁶⁵⁶

The important issue here is that in allocating zakat, whether from the available or expected zakat revenue, what types of needs should be prioritized. In cases where the zakat is in abundance, allocations for zakat investment will not be a problem for surpluses of zakat can be mobilized for investment purposes. But in the situation where zakat revenue is not enough for every recipient, the types of need which should precede another become a concern. From the above discussion regarding the allocations of zakat among the classical jurists, it may be concluded that the allocations are basically left to the ruler or its representatives, and in this case the zakat institutions or managers, to decide. Nevertheless, the rule of thumb should always be which type of need is more demanding at the time of decision, whether for consumptive, functional or investment purposes, and which group should precede another. A similar principle is also applicable in planning the allocations for individual recipients where provision for investment for the individual recipients should not be fixed but varied based on each individual's level and type of need in each period.

⁶⁵⁶ This was suggested by Abdul Jalil, "Hukum Memindahkan Pungutan Zakat dari Satu Tempat ke Tempat Lain" (paper presented at the Persidangan Alim Ulama Malaysia, Kuala Lumpur, 1968).

6.3 Interpretation of *Fī Sabīl li Allāh*

Fī sabīl li Allāh is one of the groups of recipients of zakat outlined in the Quran. The preferred view among classical jurists is that it refers to those who are in need due to war in the name of Allah (*jihād*) and are in the pilgrimage. This is based on the frequent references of the term to those in war in the Quran⁶⁵⁷ and a hadith about someone who gave his camel to those in the path of Allah and the Prophet used it to carry the pilgrimages.⁶⁵⁸

For some jurists, however, the term *fī sabīl li Allāh* represents a wider group of recipients. Payment of zakat to this group not only refers to expenditures to the above recipients but also to all other deeds that benefits the Muslim society.⁶⁵⁹ Al-Rāzī, for example, maintains that the word should not be exclusively meant for jihad but should also mean spending *ṣadaqāt* for good deeds such as burials, building forts, and mosque.⁶⁶⁰ Ibn Athīr also reports views which interpret the term as all deeds done sincerely to get nearer to God, either through the observance of the obligations, or the encouraged acts.⁶⁶¹ The above scholars based their views on the term *fī sabīl li Allāh* used in the Quran which refers to any deeds benefiting Muslims.⁶⁶²

Nevertheless, among the majority of classical jurists, the term was more widely accepted as those who are in *jihād*. Ibn Athīr gives an apt summation of this group

⁶⁵⁷ Qur. 2: 154, 190, 244; 3: 97; 8: 60; 9: 113; 57: 10.

⁶⁵⁸ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 10; al-Jazīrī, *al-Madhāhib al-Arbaʿa*, v. 1, 621. The hadith was narrated by Umm Maʿqal al-Asadiyya that her husband wanted to give a camel to *fī sabīl li Allāh* whereas she wanted it to fund her *ʿumra*. When asked for the camel, the husband refused to give it to her. She approached the Prophet and related her plight. The Prophet commanded her husband to relent and said, “The pilgrimage and *ʿumra* is *fī sabīl li Allāh*”.

⁶⁵⁹ Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, v. 2, 481.

⁶⁶⁰ Al-Rāzī, *al-Tafsīr al-Kabīr*, v. 4, 463-4; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, v. 2, 456-7.

⁶⁶¹ Majd al-Dīn ibn Muḥammad al-Jazīrī Ibn Athīr, *al-Nihāyat fī Gharīb al-Ḥadīth wa al-Āthār* (Cairo: 1893), v. 2, 338-9.

⁶⁶² Qur. 2: 195, 262, 273; 4: 95; 8: 36, 60.

exclusivity to those at war among the majority of classical jurists when he states that, "...most of the time it is meant as *jihād* till it is nearly accepted that the word is exclusively meant for *jihād* only."⁶⁶³

Among contemporary jurists, however, the term tends to be applied to include all the good deeds done, like providing public utilities that benefit Muslim society, especially the poor and the weak.⁶⁶⁴ Riḍā, for example, maintains that it refers to all things benefiting Muslim society, which strengthens religion and state and not individuals. Among the spending allowed under this category according to his view are expenditures to build hospitals, roads, airports, mosques, etc.⁶⁶⁵ Jād al-Ḥaq supports this view based on the jurists' view which allows zakat to be spent on projects which seek God's benevolence.⁶⁶⁶

The implication of the liberalized meaning of the term is that zakat can be utilized to finance any investment meant for the wellbeing of Muslims as a whole and not necessarily for a certain group of recipients only. This also means that a full conference of ownership rights to the individual recipients is not necessary since *fī sabīl li Allāh* can represent the general Muslim community or any group inside the community. Projects like the establishment and maintenance of educational institutions, hospitals, housing, buildings or venues for Muslims to conduct their businesses can be financed with zakat using the allocations for this group of recipients.

Unfortunately, the liberal meaning of *fī sabīl li Allāh* also has its downsides. Projects which are aimed for the general public will tend to be implemented for they would be

⁶⁶³ Ibn Athīr, *al-Nihāya fī Gharīb al-Ḥadīth wa al-Āthār*, v. 2, 338-9.

⁶⁶⁴ Muḥammad ʿUqlah al-Ibrāhīm, *al-Dilālāt al-Aṣīlat al-Muʿāṣira li al-Wathāʾiq wa al-Rusul al-Mutaʿalliqā bi al-Zakā fī ʿAḥdayn al-Nabawī wa al-Rāshidīn* (Amman: Al-Maktabat al-Risālat al-Ḥadītha, 1988), 119; Muḥammad Mutawallī al-Shiʿrāwī, *al-Fatāwā: Kullu Mā Yahummu al-Muslim fī Ḥayātihi Yawmahu wa Ghaddahu* (Cairo: Dār al-Fatḥ li al-ʿĀlam al-ʿArabī, 1997), 495; Muʿtamar Majmaʿ al-Fiqh al-Islāmī, *Majallat Majmaʿ al-Fiqh*, no. 3, part 1, 405.

⁶⁶⁵ Riḍā, Muḥammad Rashīd, *Tafsīr al-Mannār*, v. 1, 435.

⁶⁶⁶ Jād al-Ḥaq, *Buḥūth wa Fatāwā Islāmiyya fī Qaḍāyā Muʿāṣira*, v. 1, 389-93.

easier to control, as well as encompassing wider groups of recipients. The groups of recipients which are clearly determined by the Quranic verse and agreed by the jurists, like the *fuqarā'*, *masākīn*, *ghārimūn* and *riqāb*, for example, might be neglected and forsaken while the ones which are clearly excluded, like the affluent, might be favoured. The development of roads and airports, for example, will benefit all walks of life but undoubtedly benefit people with transport and money more.

This must be the reason why some scholars like al-Qaraḍāwī and ʿUlwān are more inclined to limit the interpretation of *fī sabīl li Allāh* to *jihād*. They maintain that the term should include only good deeds which help make God's word supreme on earth. Thus they distinguish between establishing schools in general and schools which can disseminate the teachings of Islam which can counter the threats of the non-Islamic education.⁶⁶⁷

This later view is prevalent among Malaysian scholars and is reflected by the position taken by the zakat institutions in defining the term.⁶⁶⁸ MAIWP, for example, defines recipients in the group as, "any individual or organisation that is involved in activities to uphold, defend and disseminate the teachings of Islam and its welfare."⁶⁶⁹ Zakat which is distributed to this group is spent on the development and maintenance of religious schools and mosques, the costs of disseminating the teaching of Islam such as remuneration of religious teachers, seminars and publications, scholarships for those in need but who do not belong to the group of *fuqarā'*, *masākīn*, or *mu'allafat qulūbuhum*, etc.⁶⁷⁰

⁶⁶⁷ *Jihād* for them refers not necessarily to war that propagate Islam, but also to all kind of struggles made to disseminate Islamic teachings and to create an environment suitable for Islamic way of life. Al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 658-67; ʿUlwān, *Aḥkām al-Zakā*, 65-7.

⁶⁶⁸ The meaning of the term can be accessed at the websites of some of the zakat institutions.

⁶⁶⁹ MAIWP, Laporan Tahunan 2007, 122.

⁶⁷⁰ Examples of this kind of distribution under the group of *fī sabīl li Allāh* for the state of Perak, Kedah, Negeri Sembilan and Selangor between 1990 and 2000 can be found in Zulkefly,

6.4 Excess of Zakat

Excess or surplus of zakat, sometimes known in its Arabic terms as *al-fā'id*, is the difference between available zakat to spend and the actual spending made in a period of time.⁶⁷¹ There are several instances of excess of collection mentioned in early Islamic history. During the period of ʿUmar, the second Caliph, for example, it has been narrated that Muʿadh, who was sent to collect zakat in Yemen, has brought back an amount of zakat to the Caliph. When asked why the zakat was not distributed where it was collected, he was reported saying, "...I no longer find anyone who wants to take the zakat from me..."⁶⁷² The narration indicates that the amount brought home to the Caliph was a surplus of distribution since the reason behind it is the fulfilment of all recipients' rights at the place of collection.⁶⁷³

In Malaysia, the surplus between collection and distribution exists for most states almost every year since the zakat institutions were established.⁶⁷⁴ The excess known to the public is normally the balance between the collected and distributed zakat at the

"Pendapatan dan Sasaran Perbelanjaan Dana Zakat di Negeri Kedah, Perak, Selangor dan Negeri Sembilan: Isu dan Cabaran".

⁶⁷¹ Muḥammad Farah refers to excess of zakat as an inflow (*al-tadaffuq*) of zakat revenue. See Muḥammad Farah, *al-Tawjīh al-Istithmār li al-Zakā*, 101. A more accurate word would be a net flow of zakat revenue.

⁶⁷² Abū ʿUbayd, *Kitāb al-Amwāl*, 596.

⁶⁷³ Similar situation also was reported during the reign of Caliph ʿUthmān (644-56A.D.) and ʿUmar ibn ʿAbd al-ʿAzīz (717-20A.D.). These examples are given by Siddiqi in discussing several hadiths which described such situation in the future. See Siddiqi, tr. *Saḥīḥ Muslim*, v. 2, 484.

⁶⁷⁴ Zulkefly Abdul Karim et al., "Pendapatan dan Sasaran Perbelanjaan Dana Zakat di Negeri Kedah, Perak, Selangor dan Negeri Sembilan: Isu dan Cabaran," (paper presented at the Muzakarah Pakar Zakat, Bangi, Malaysia, 21-22 Dec. 2002). See also Abdul Aziz, *Zakat and Rural Development in Malaysia*, 124-5, 193. See Appendix B. The annual retained collection is the 'Differences between Collection and Distribution'.

end of a particular Gregorian year⁶⁷⁵ following the zakat institutions' accounting year end which are used in their annual reports.⁶⁷⁶

On average, between 2003 and 2007, 24.6% of zakat revenue in Malaysia is not distributed. The retained revenue was recorded highest at the incorporated zakat managers at an average of 26% while the non-incorporated managers only recorded 22% retained revenue during the same period.⁶⁷⁷ Among the incorporated managers, LZS recorded the lowest retained revenue at an average of 8.7% and MAIWP recorded among the highest retained percentage at 35.1%.⁶⁷⁸

There are many reasons given to explain the existence of this excess in Malaysia. The main reason is attributed to the requirement of preparation of annual budgets prior to the actual collection and distribution. Zakat institutions, in this regard, are required by the states' administration of Islamic law enactments to prepare an annual budget in advance or, in other words, prior to the actual zakat collection and distribution. The actual expenditures later on are also required to be made in accordance to this budget. Due to these requirements, all of the expenditures for the following year are planned in advance according to the revenue estimation and, in general, are made according to this plan.⁶⁷⁹ The required budgeting system has resulted in an excess of zakat when the actual zakat collection is more than the estimated one. The insistence that the

⁶⁷⁵ All of the zakat institutions in Malaysia keep their account according to the Gregorian calendar year, not the Hijra year including the state of Kelantan which local government arranges its functions according to the Islamic calendar. See Sec. 72, Council of Religion and Malay Custom Enactment (Kelantan) 1994.

⁶⁷⁶ Zakat institutions in the state of Wilayah Persekutuan and Selangor which have comprehensive and advanced computer system also release their monthly collection and distribution data, enabling the public to assess both the annual and monthly zakat balances.

⁶⁷⁷ The retained revenue is calculated by dividing the difference between the total collection and distribution over the total collection.

⁶⁷⁸ See Appendix B.

⁶⁷⁹ See for examples, Sec. 69, Administration of Islamic Law Act (Federal Territories) 1993; Sec. 82, Administration of Islamic Law Enactment (Selangor) 2003.

expenditures must be made according to the plan, furthermore, causes the excess of collection to be difficult and not easily distributed.⁶⁸⁰

The problem of inconsistency between the estimated revenues and expenditures with the actual ones occurs because of the inconsistency of collection throughout the year. Some months like Ramadan⁶⁸¹ and December⁶⁸² record higher collection of zakat compared to other months. As a consequence, it is nearly impossible for the zakat institutions to have a correct estimation of the zakat collection and zero budget balance in each year.⁶⁸³ Collection also depends on many factors outside the control of the MAINs, for instance, the payers' awareness about their obligations to pay zakat and their readiness to pay zakat. Other reasons given for the excess include the high collection amount compared to the number of recipients⁶⁸⁴, reserves retained to ensure the availability of zakat for disbursement especially to satisfy the consumptive needs of the *fuqarā'* and *masākīn*,⁶⁸⁵ and the MAINs inefficiency in disbursing the collected funds

⁶⁸⁰ Interview with Aidi Munawir Ahmed Shukri, Deputy Chief Manager (Management) and Head of Finance Department, Lembaga Zakat Selangor, 22 Jan. 2009.

⁶⁸¹ Ramadan occurred mostly in October and September in 2005 to 2008. Zakat collected by LZS in Ramadan amounted to an average of 18% of the annual collection between 2006 and 2008. The high surge of collection during this month can be attributed to the Islamic teachings that any goodness performed during this holy month will receive multiple rewards and blessing from Allah compared to other months. In addition to this, payment of *zakāt al-fiṭr* is obliged to be made during this month or in the morning of the month of Shawal.

⁶⁸² Zakat collected by LZS in December amounted to on average of 26% of the annual collection in 2006 to 2008. The high surge of collection during this month might be attributed to the taxation factor. Companies and individuals paying their annual taxes might seek a rebate for the payment of zakat made before the upcoming January.

⁶⁸³ Ahmad Saleh, "Pelaburan Zakat di Malaysia: Kajian di Batulmal Majlis Agama Islam Wilayah Persekutuan" (M.A., Universiti Kebangsaan Malaysia, 1999), 77.

⁶⁸⁴ Interview with Rafidah Abdul Rahman, *Assistant Manager, Investment Unit, Development and Investment Division, MAIWP*, 19 June 2008. This is true for Wilayah Persekutuan given that it is the economic centre of Malaysia. See also footnote 3, Chapter 8.

⁶⁸⁵ Interviews with Rafidah Abdul Rahman, *Assitant Manager, Investment Unit, Development and Investment Division, MAIWP*, 19 June 2008 and with Fauzi Masdan, *Head of Development Division, Lembaga Zakat Selangor*, 18 Sept. 2008.

reflected by the lack of interaction between the zakat managers and the recipients,⁶⁸⁶ lack of personnel to identify and access the rightful recipients⁶⁸⁷ and so forth.

The solution for an excess of zakat revenue as advocated by classical jurists is the transfer of zakat to nearby states where there is need for zakat. All jurists agreed that transfer of zakat is allowed once the needs of the local recipients are fulfilled. The Maliki's and Shāfi'i's even oblige the transfer of zakat when the needs of all of the local recipients are fulfilled.⁶⁸⁸ Al-Dusūqī maintains that if there is no recipient left in the area of disbursement or nearby, the surplus must be transferred to places where there are recipients even though the place is outside the *masāfat al-qaṣr*.⁶⁸⁹

In Malaysia, such transfers cannot be easily implemented due to the restrictive jurisdiction of the religious affairs accorded to each state. Furthermore, a transfer can only be executed to the states where there is an insufficient amount of zakat collected to fulfil its recipients' needs. And most states in Malaysia for almost every year have recorded an excess of collection which disqualifies them from receiving any other state's surpluses. As a result of this, excess of zakat is not transferred to other states in Malaysia except in certain situations like the big flooding in Kedah and land-slide in Selangor in 2008.⁶⁹⁰

In some states like Wilayah Persekutuan and Penang, there are *fatwās* that allow their zakat institutions to invest this undistributed (or excess of) zakat. The MAIN of Penang in 1979, for example, decreed that it is permissible to invest any excess of its zakat

⁶⁸⁶ Muhammad Syukri Salleh, "Lokaliti Zakat: Satu Cadangan Teoritis" in *Zakat Pensyariatan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 214-5.

⁶⁸⁷ In the state of Kelantan for example, there are three officers in charge of investigating and verifying applicants for zakat. Interview with Asmah Mat Salleh, *Assistant Officer of Resource Affairs, Majlis Agama Islam dan Adat Istiadat Melayu Kelantan*, 30 Feb. 2010.

⁶⁸⁸ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 193; Sahnūn, *al-Mudawwana*, v. 1, 336-7; al-Azhari, *Jawāhir al-Iklīl*, v. 1, 141.

⁶⁸⁹ Al-Dusūqī, *Ḥashiyat al-Dusūqī*, v. 1, 501.

⁶⁹⁰ MAIWP, Laporan Tahunan 2008, 44.

revenue for the benefits of Muslims.⁶⁹¹ Similarly, in 1995 the *fatwā* committee of Wilayah Persekutuan decreed that the *al-fāid* of zakat, after ensuring that all of the state's recipients' rights have been fulfilled satisfactorily, may be deposited or invested to enhance the MAIN's financial position in financing the eight groups of recipients.⁶⁹² The *fatwā* committee also allowed the excess to be spent under the *fī sabīl li Allāh* group to promote Islamic teaching.⁶⁹³ Some states like Selangor, however, do not conclusively decide whether it can be invested or not⁶⁹⁴ though the excess, as will be shown later, also ends up in investment activities.⁶⁹⁵

It is also worth noting that, aside from the allocations made for investments, the excess of zakat is also brought forward for the upcoming year expenditures especially for the distributions which are already approved for that particular year but yet to be paid.⁶⁹⁶

⁶⁹¹ Peraturan 27(4), Peraturan-peraturan Pungutan Zakat dan Fitrah Negeri Pulau Pinang Tahun 1979. According to the regulation, if there is an increment in the need of the recipients, the fund invested will be liquidified and disbursed to the recipients. See also Mohd Yusuf Abd Latif, "Pungutan, Penghasilan dan Penggunaan Zakat di Pulau Pinang Masa Kini dan Masa Depan di Dalam Konteks Pembangunan Umat Islam" (paper presented at Seminar Zakat dan Cukai Pendapatan, Pulau Pinang, 1988). Mohd Yusuf at that time was the Yang Dipertua of Majlis Agama Islam Pulau Pinang. He stated that in 1988, the excess of zakat was invested to acquire more than 56 acres of paddy field, and a 2 storey house. Apart from these, an excess worth M\$995,000 was also invested in accounts at the Bank Islam Malaysia Berhad.

⁶⁹² Jawatankuasa Hukum Syarak Wilayah Persekutuan, Meeting no. 43, 13 Dec. 1995. The *fatwā* was cited by Zainal Abidin Jaafar, "Pengurusan Agihan Zakat: Pengalaman Baitulmal Wilayah Persekutuan Kuala Lumpur", in *Zakat Pensyariatan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir, (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 372.

⁶⁹³ Jawatankuasa Hukum Syarak Wilayah Persekutuan, Meeting no. 40, 17 Jan. 1995. The *fatwā* was cited by Zainal Abidin, "Pengurusan Agihan Zakat: Pengalaman Wilayah Persekutuan Kuala Lumpur" 372.

⁶⁹⁴ Hasan Baharom and Ezani Yaakub, *Pengurusan Zakat Semasa* (Selangor: Universiti Teknologi Malaysia, 2006), 29.

⁶⁹⁵ This will be discussed in detail in 8.2.3.

⁶⁹⁶ MAIS, Laporan Tahunan MAIS 2007, 33; idem, Laporan Tahunan MAIS 2006, 33.

6.5 Transfer of Zakat to Other States

According to the majority of jurists, zakat must be disbursed in the area where the zakatable wealth originates and prospers (*mawṭin al-māl*) except in several special circumstances.

The principle is based mainly on the generality of the verses of the Quran on zakat distribution⁶⁹⁷ which are ambiguous regarding the places of distribution, as well as the understanding from several hadiths, among which is a hadith narrated by al-Bukhārī and Muslim from Ibn ʿAbbās who reported that when the Prophet sent Muʿādh to Yemen, he said to him,⁶⁹⁸

“Let them be known that Allah has obliged upon them zakat which will be taken from the affluent among them and will be distributed to the poor among them.”

For Ibn Ḥanbal, the plural pronoun attached to the poor stipulates that zakat must be distributed to the poor among the local residents or those in the same state. The conclusion has been further elucidated by a discourse between ʿUmar Al-Khaṭṭāb and Muʿādh during the reign of ʿUmar, as narrated by ʿAmrū ibn Shuʿayb. Muʿādh, who was again assigned to collect zakat in Yemen, brought back some zakat to Medina where ʿUmar resided. ʿUmar reprimanded him for taking away the alms from its people, and famously said, “... zakat must be taken from the rich among them (the

⁶⁹⁷ Among the verses of Quran which describe the methodology of zakat distribution are, “The alms (zakat) are only for the poor (*fuqārāʾ*) and the needy (*masākīn*), and those who collect them (*ʿāmilūn*), and those whose hearts are to be reconciled (*muʿallafat qulubuhum*), and to free the captives (*riqāb*) and the debtors (*ghārimūn*), and for the cause of Allah (*fī sabīl li Allāh*), and (for) the wayfarer (*ibn al-sabīl*); a duty imposed by Allah. Allah is Knower, Wise,” (Qur. 8: 60); “...pay the due thereof upon the harvest day...,” (Qur. 6: 141); “Out of their wealth take zakat so thou might purify and sanctify them,” (Qur. 9: 103).

⁶⁹⁸ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, hadith no. 102, v. 2, 109; Muslim, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī*, v. 1, 199-200.

local residents of Yemen) and disbursed to the poor among them (the local residents of Yemen) also.”⁶⁹⁹

There is a consensus among the classical jurists that zakat on agriculture and livestock must be paid where the zakatable wealth prospers and not at the place where the owner resides if it is different. Similarly for the tradable goods, the majority of jurists also view that zakat must be paid where it is traded.⁷⁰⁰ Only the Mālikīs maintain that it should be disbursed where its owner is, presumably because this kind of wealth is considered always attached to the owner.⁷⁰¹ Nevertheless, there are certain circumstances whereby zakat is allowed to be disbursed outside of this *mawṭin al-māl*. Such payment in the literature of Islamic laws regarding zakat is termed as *al-naql* or transfer.

Besides this definition, sometimes the term *al-naql* also refers to payment of zakat to other recipients who are from outside the designated place of payment but are there at the time of distribution. A definition given by al-Qalyūbī reflects this when he states that *al-naql* is “... to give zakat to those who are not at the place where it should be disbursed at the time of obligation”.⁷⁰² Zakat, according to this view, must be disbursed not only where it originates and prospers but is also limited to those who reside in the area and not to those who pass through the area or are there temporarily.

Some jurists like the Mālikīs and the Shāfi‘īs only allow transfer of zakat from its *mawḍi‘ al-māl* once all the local recipients’ needs are fulfilled.⁷⁰³ According to Abū

⁶⁹⁹ Ibn Qudāma, *al-Mughnī*, v. 2, 531; Abū ‘Ubayd, *al-Amwāl*, v. 4, 596.

⁷⁰⁰ If the wealth is always on the move, payment has to be made where the wealth is at the times of due. See al-Nawawī, *Kitāb al-Majmū‘*, v. 6, 211; al-Bahūfī, *Kashshāf al-Qinā’*, v. 2, 264; Ibn Qudāma, *al-Mughnī*, v. 2, 532; Ibn ‘Ābidīn, *Radd al-Mukhtār*, v. 3, 306.

⁷⁰¹ Al-Azharī, *Jawāhir al-Iklīl*, v. 1, 141.

⁷⁰² Shihāb al-Dīn Aḥmad ibn Aḥmad, al-Qalyūbī, *Ḥāshiyat al-Qalyūbī wa ‘Umayra* (Cairo: ‘Isā al-Bābī al-Ḥalabī, 1980), v. 3, 202.

⁷⁰³ Sahnūn, *al-Mudawwana*, v. 1, 336-7; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 141; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 193.

‘Ubayd, the fulfilment of local recipients must precede transfer to another state because the poor of a state are more entitled to the zakat collected in the state compared to the other state’s population.⁷⁰⁴

This prerequisite of fulfilment of local recipients’ needs, however, is waived by the Ḥanafis and some scholars in Ḥanbalis like Abū Ya‘lā al-Farrā’ and Ḥasan al-Bannā when there exist certain recipients who deserve the zakat more than the local recipients. The determinants include kinship, need, piety, contribution to society, knowledge seeking and transfer from a non-Islamic state to an Islamic one.⁷⁰⁵

In the Malaysian context, a state which has a definite boundary is given independent control over its religious matters. It has the freedom to enact and adjudicate on Islamic laws (including zakat) separately from other states. Thus in the case of zakat, the state, specifically the Majlis Agama Islam Negeri (MAIN), is accorded full right to manage zakat and devise any rules pertaining to it. Given the definite boundary, any collection of zakat made within a state is mandated to be disbursed within that particular state. Thus a MAIN will only collect zakat in its state, and it will normally distribute it to the recipients residing in the state only. However, transfer of zakat does take place among the states in Malaysia, especially from the rich states like Wilayah Persekutuan and Selangor to other states which are facing some catastrophe, like a flood.⁷⁰⁶ A *fatwā* issued by the national fatwa committee in 2005, allows any state that needs extra zakat for distribution to apply directly to any MAIN which has a high collection amount. The right to approve the transfer is left to the MAIN.⁷⁰⁷

This shows that transfer of zakat between the states of Malaysia is possible. The possibility to transfer zakat funds from states which receive a huge amount of zakat

⁷⁰⁴ Abū ‘Ubayd, *Kitāb al-Amwāl*, v. 4, 596, 598.

⁷⁰⁵ Ibn al-Humām, *Sharḥ Faṭḥ al-Qadīr*, v. 2, 284; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 679.

⁷⁰⁶ MAIWP, Laporan Tahunan 2007, 24.

⁷⁰⁷ The *fatwā* was issued at the committee’s 68th meeting held on 14 April 2005. See JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 72.

collection like Selangor and Wilayah Persekutuan is important in assisting the states with lower zakat collection, especially to implement more types and quantity of zakat investment.

6.6 Advance Payment of Zakat

An advance payment of zakat refers to a payment of zakat before the arrival of the period when zakat has to be paid, that is, before the completeness of a *ḥawl*. It may take place before or after the completion of *niṣāb*.

The majority of jurists from the Ḥanafīs, Mālikīs, Shāfi'īs and Hanbalīs maintain that an advance payment of zakat is not possible before the completeness of *niṣāb* because it is considered as performing an observation prior to the reason of its obligation.⁷⁰⁸ An advance payment of zakat is allowed only once the *niṣāb* of the zakatable wealth is achieved.⁷⁰⁹ The rationale of the view has been aptly summed up by an Islamic legal maxim which states that, "Preceding a law before its requirement when its reason precedes, is permissible."⁷¹⁰ Therefore, when the reason of obligation that is *niṣāb* exists, the non-conclusion of the *ḥawl* will not affect the performance of zakat. Furthermore, when the owner of zakatable wealth is willing to forgo his right to the conclusion of the *ḥawl*, it no longer becomes a requirement in the payment of zakat. This is similar to the case of debt which is paid earlier than the originally promised settlement date.⁷¹¹

⁷⁰⁸ Al-Nawawī, *Kitāb al-Majmūʿ*, v. 6, 112-3; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 282.

⁷⁰⁹ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 176-7; al-Mardawī, *al-Ḥāwī al-Kabīr*, v. 3, 160; al-Nawawī, *Rawḍat al-Tālibīn*, v. 2, 70-1; al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 282.

⁷¹⁰ This is a translation of (ان تقديم الحكم على شرطه اذا تقدم سببه جائز).

⁷¹¹ Al-Qarāfi, *al-Dhakhīra*, v. 3, 137.

The advance payment of zakat is approved based on *ḥadiths* such as the one narrated by ʿAlī where ʿAbbās has asked the Prophet p.b.u.h. regarding advancing his zakat before the completion of the *ḥawl*, and the Prophet has allowed him to perform it.⁷¹²

The Malikīs, however, add further restriction whereby an advance payment is only allowable if executed just before the conclusion of the *ḥawl*.⁷¹³ They base their view on a *ḥadith* which states that zakat on wealth becomes an obligation only when it reaches its *ḥawl*. Zakat for them is considered to be an *ʿibāda* that requires intention. For an intention to exist, it requires specific quantity (*qadr*) and time (*waqt*) which in the case of zakat is *niṣāb* and *ḥawl* respectively. Without either one of these requirements, the owner of the zakatable wealth is not obliged to pay zakat yet.⁷¹⁴

In financing zakat investment, an advance payment becomes important as a source of financing especially during the period of insufficient zakat to finance investment activities. In Malaysia, such payment is not covered by any of the zakat laws and perusing the annual reports of the zakat institutions also shows no record of this kind of payment. A reason why an advance payment does not receive any attention from the policy maker might be because the act of advancing payment cannot be forced on the zakatable owners. Furthermore, the excess of zakat recorded at the zakat institutions themselves show that zakat is already in abundance and, hence, does not necessitate an appeal for an advance payment. Nevertheless, the possibility of an advance payment of zakat gives an opportunity for the zakat institutions to plan for investments of zakat which require a higher amount than the current zakat revenue.

⁷¹² Narrated by Aḥmad, Abū Dāwūd, al-Ḥākim and al-Dāruqutnī. Even though its chain of transmission (*sanad*) is weak but its meaning is supported by another *ḥadith* narrated by ʿAlī ibn Abū Ṭālib from ʿUmar. See these *ḥadiths* in al-Bahūfī, *Kashshāf al-Qināʾ*, v. 2, 265; al-Dhakhīra, v. 3, 137. For more supporting *ḥadiths*, see al-Shāfiʿī, *al-Umm*, v. 3, 50; al-Mardawī, *al-Ḥāwī al-Kabīr*, v. 3, 159-60; Ibn Qudāma, *al-Mughni*, v. 2, 499-500.

⁷¹³ Sahnūn, *al-Mudawwana*, v. 1, 335; al-Azhari, *Jawāhir al-Iklīl*, v. 1, 141; al-Qarāfī, *al-Dhakhīra*, v. 3, 137.

⁷¹⁴ Al-Mardawī, *al-Ḥāwī al-Kabīr*, v. 3, 157-8; al-Qarāfī, *al-Dhakhīra*, v. 3, 138; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 177.

6.7 Zakat Loans

A zakat loan refers to a loan sourced from zakat funds and which must be returned to the funds. Modern Muslim scholars insist that the loan must be an interest free loan or normally known as *al-qarḍ al-ḥasan* to avoid *ribā* and to safeguard the sanctity of zakat.

Discussions regarding zakat loans are not frequently found among the classical jurists. There is a report in al-Zahīriyya that zakat for *ibn al-sabīl* is encouraged to be given as a loan instead of as alms.⁷¹⁵ The scarcity of discussion may be attributed to several reasons. First, debtors who become poor with their debts are eligible for zakat for the payment of their debt under the group of *ghārimūn*. The debt must be paid with their assets first. Zakat will only be given to pay the balance when the assets are exhausted and can no longer fulfil their *kifāya*.⁷¹⁶ Thus, those whose loans made them poor have already been covered by zakat and are no longer in need of loans. As for those who have assets to pay their debts and basic necessities, they cannot be considered as *ghārimūn* and thus are not eligible to receive zakat.⁷¹⁷ Secondly, the extension of zakat as a loan to a rightful recipient of zakat is actually an act of denying their rights to receive the zakat. And thirdly, extending the zakat as a loan to a non-recipient will lead to the problem of deferring zakat from being transferred to the rightful recipients without any accepted justification. This action is not allowed by the majority of jurists.⁷¹⁸

More recent Islamic jurists like Abū Zahra and al-Qaraḍāwī have broadened the scope of debt to include future debt besides the outstanding debt of *ghārimūn*. According to al-Qaraḍāwī, a special fund for zakat loans for those in need of loans should be

⁷¹⁵ Al-Sheikh Nizām et al., *al-Fatawā al-Hindiyya* (Beirut: Dār al-Kutub al-Ilmiyya, 2000), v. 1, 207.

⁷¹⁶ Apart from the requirement that a debtor's assets must be consumed by his debts, zakat also can only be given to pay debt which is due for settlement and not for debt with future settlements. See al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-80; Ibn Qudāma, *al-Mughnī*, v. 2, 704.

⁷¹⁷ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179.

⁷¹⁸ See the discussion regarding the accepted justifications for deferring payment of zakat in 5.2.3.

established under the title of those under debt.⁷¹⁹ Abū Zahra and al-Qaraḍāwī argue that if zakat can be used to pay fair debts owed by the *ghārimūn*, then future loans may also be granted to them from the zakat fund if the borrower provides proof that he can repay it later. The suggestion is seen as a solution to discourage any would be borrower from taking an interest loan.⁷²⁰

Today, where financing from a financial institution can be secured only with collateral, the idea is an appropriate solution for those who are without collateral but need external financing to advance or improve their economic conditions. A good example is an entrepreneur or would-be entrepreneur who has neither collateral nor credibility to secure external financing from financial institutions. Shehatah echoes this idea when he suggests that zakat loans may be employed as a new source of finance to assist the poor to get out of the poverty line.⁷²¹

The idea, however, lacks consistency with the concept of *ghārimūn* as outlined by classical jurists. According to the majority of jurists, the *ghārimūn* are the people who own a *kifāya* (an amount that can fulfil a person's basic needs) but whose wealth is reduced below the *kifāya* given the debts that they owed.⁷²² Thus the *ghārimūn* must only be those who are already overwhelmed with debts. Furthermore, zakat can only be given for the amount of debt due and not for any future debt.⁷²³ If the idea is to be implemented, then the loans should be allocated under other groups of recipient. According to Mohd Zain, the most appropriate allocation can be disbursed under the

⁷¹⁹ He was adamant that zakat loans must be provided to *ghārimūn* only. Al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 634.

⁷²⁰ The quotes and view of Abū Zahra are cited in Shehatah, "Limitations on the Use of Zakah Funds in Financing the Socio-economic Infrastructure of Society", 64-5. Fair debts here refer to debts owed by owners who are capable of returning them as promised. See al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 634.

⁷²¹ Shehatah, "Limitations on the Use of Zakah Funds in Financing the Socio-Economic Infrastructure of Society", 65.

⁷²² Al-Shāfiʿī, *al-Umm*, v. 3, 183-4; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-80.

⁷²³ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 180.

riqāb who in the current world should include those who are marginalised socially and economically.⁷²⁴

Today where there is an alternative to interest based financing, the argument that zakat loans are necessary to discourage borrowers from loans with *ribā* is also debatable. Securing a free interest loan nowadays is only a matter of choice given the availability of multiple Islamic financing products on the market.⁷²⁵

In Malaysia, there are conflicting views regarding zakat loans. A *fatwā* decreed by the Syariah Committee of Majlis Agama Islam Pulau Pinang in 1998 disallowed the use of the excess of collection as loans, including for financing education.⁷²⁶ In 2000, the committee again issued another *fatwā* disallowing the use of zakat to finance education loans. The reason provided was that in giving zakat, there should be full transfer of ownership (*tamlīk*) and a loan does not include this right.⁷²⁷ Patmawati, who views zakat as a source for developing the overall Muslim community, on the other hand, suggests that zakat loans can be given from any excess of collection to Muslim entrepreneurs who found their companies on the brink of failure and need cash injections. She argues that loan extensions are better alternatives than allocations under *ghārimūn* since the connotation of being in a group of those overwhelmed with debt might hurt their business goodwill and further exaggerate their problem.⁷²⁸

⁷²⁴ Khalid Mohd Zain, "Kearah Pembangunan Ekonomi dan Sosial Umat Islam Terengganu Melalui Zakat, Baitulmal dan Wakaf" (paper presented at the Seminar Pembangunan Islam Terengganu, Kuala Terengganu, Malaysia, 14 – 16 April 1977).

⁷²⁵ Rajesh K. Aggarwal and Tarik Yousef, "Islamic Banks and Investment Banking." *Journal of Money, Credit and Banking*, 32: 1 (2000), 95-7.

⁷²⁶ The *fatwā* was decreed on Jan. 1998 by the Syariah Committee, Majlis Agama Islam Pulau Pinang. See Jabatan Mufti Negeri Pulau Pinang (ed.), *Himpunan Fatwa Negeri Pulau Pinang 1995 – 2004*, 24.

⁷²⁷ www.e-fatwa.gov.my (accessed on 1 April 2010).

⁷²⁸ Interview with Patmawati Ibrahim, *Lecturer in Islamic Economics*, University of Malaya, Kuala Lumpur, 16 Jan. 2009.

6.8 Payment in Value or Kind

For certain types of wealth like plants, livestock, gold and silver, zakat is measured and paid in the same type of wealth. For example, zakat for 40 to 120 goats owned is a goat and zakat for 200 *dirhām* of pure silver is five *dirhām* of pure silver.⁷²⁹

The above emphasis on calculation and payment of zakat in the same type of the zakatable wealth has instigated the discussion as to whether it is permitted to substitute the original payment of zakat with its value.⁷³⁰ The conflict originates from the disagreement among jurists whether zakat should be considered as a form of worship (*ʿibāda*) or as a right assessed on the wealth for the needy. The Shāfiʿīs, who maintain that zakat is a form of worship, insist that the mode of payment has to follow the dictate of *naṣṣ*. That is, it must be paid according to the kind that is mentioned in the Quran and hadiths. They argue that the reason for this is because worship must be performed according to its prescription, that is, according to the stated *naṣṣ*, to ensure its validity.⁷³¹ However, they allow payment in value in emergency cases, for example, when some livestock has been affected with diseases, or there is an obstacle to storing and transporting the collected zakat, like the need to pay for the storage and transportation cost.⁷³² The Ḥanbalis in general also disallow payment in value except in times of need only, such as owning no goat to settle the zakat on camels.⁷³³

The Ḥanafis, conversely, disagree with this view and maintain that payment in value makes no difference as long as the right of those receiving zakat has been fulfilled.⁷³⁴

⁷²⁹ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 1, 182, 211.

⁷³⁰ Al-Qaraḍāwī, *Fiqh al-Zakā*, v. 2, 799.

⁷³¹ Al-Shāfiʿī, *al-Umm*, v. 3, 194; Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 311-2.

⁷³² Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 199.

⁷³³ Ibn Taymiyya, *Fiqh al-Zakā wa al-Ṣiyām*, 43.

⁷³⁴ Ibn Rushd, *Bidāyat al-Mujtahid*, v. 1, 303, 311-2.

Furthermore, they encourage payment in value because it facilitates payment by owner and is considered as a more convenient financing method to make the recipients rich.⁷³⁵ Comparing the advantage of the two methods of payment, payment in value or currency is more beneficial to the needy⁷³⁶ because payment in kind to them will only be directly utilized and consumed since they lack the ability to turn the zakat into productive sources.⁷³⁷ Most of all, they lack the capital and skill needed to assist them in manipulating the zakat received and make it grow. Payment in value is also more practical to zakat institutions which can collect the value in ease and bear minimal costs for transport and storage. Furthermore, the zakat institution and recipients will have the flexibility in implementing the type of investment which is compatible to the recipients' interest and capability.

In Malaysia currently, collection of zakat is mostly made in currency since more than 90% of the zakat collected comes from zakat on income.⁷³⁸ Even in the state of Kedah which is a well known producer of paddy, zakat paid for paddy is only 5.6% of the total zakat collected in 2007.⁷³⁹ Apart from this, the centralization of collection of zakat at the zakat institutions also means that payment in kind becomes impractical since the zakat requires both space and cost to store and keep.

6.9 Principal Reduction or Losses

Two main attributes of investment are time and risk, which implies that over time, the possibility of return and even the principal of investment will be different than that

⁷³⁵ According to al-Sarakhsī, the choice is given to the payer, not the collector. See al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 1, 156-7.

⁷³⁶ Abu Saud, *Contemporary Zakat*, 129.

⁷³⁷ Mohamad Uda Kasim, *Zakat. Teori, Kutipan dan Agihan* (Kuala Lumpur: Utusan Publications and Distributors, 2005), 202-3.

⁷³⁸ PPZ, *Laporan Zakat PPZ*, various years.

⁷³⁹ http://www.zakatkedah.com/data_hasil.asp (accessed on 12 Nov. 2009).

forecasted.⁷⁴⁰ In other words, the value of an investment over time may be higher, the same or even lower than its initial invested value. For zakat due, if it is allowed to be invested, then the issue of the possible situation whereby the principal fund will over time be reduced from the amount initially invested or totally lost has to be examined. If this incident occurs, two circumstances need to be elucidated from the juristic view as to the validity of the zakat paid if the fund becomes less than the obliged amount or becomes nil, and the compensation involved.

It should be noted that the losses under consideration are the losses that occur prior to the possession of zakat by the recipients. The reason for this is that after the recipient's acceptance of zakat, the act of payment of zakat as obliged upon the owner will become fully accomplished and any losses incurred afterwards will no longer affect his obligation. The losses that occur prior to the recipients' possession of zakat may occur when the due is still with the payer or when it has been collected by representatives of the state but is yet to be distributed to the recipients. Given that these losses occur during the time of delay, treatment for principal reduction or losses in an investment of zakat can basically be derived from those of delay in the payment of zakat.

As noted in the previous chapter, the classical jurists disagree on the exact time that a delay in the payment of zakat begins. This disagreement is also reflected in their views regarding the exact time when losses of zakat incurred must be replaced. The Shāfi'īs and the Mālikīs view that delay in the payment of zakat begins after the ability of payment is present. According to them, the owner must replace only zakat that is damaged or lost after his ability to pay is present and the loss incurred is due to his negligence.⁷⁴¹ The Hanbalīs also have a similar view that the owner must only replace losses made during the delay in payment. The only difference is that, for them,

⁷⁴⁰ R. Charles Moyer et. al., *Contemporary Financial Management* (Minneapolis/St. Paul: West Publishing, 1995), 178.

⁷⁴¹ Al-Nawawī, *Kitāb al-Majmū'*, v. 5, 341-2; al-Bahūtī, *Kashshāf al-Qinā'*, v. 2, 182; Ibn Qudāma, *al-Mughnī*, v. 2, 542; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 141-2.

obligation to pay zakat begins right after the completion of *nisāb* and the arrival of the *ḥawl*. Thus, losses incurred after these two requirements are fulfilled must be paid by the owner who is obliged to pay zakat, even when he is unable to pay zakat at that time.⁷⁴²

The Ḥanafis, on the other hand, have a different view regarding the compensation for zakat lost due to damages. Since the object of obligation (*maḥl al-zakā*) for them is the *nisāb*, any damages that affect the *nisāb* will influence the owner's obligation in paying his zakat. If all the zakatable wealth is damaged after the arrival of the *ḥawl*, the owner is no longer obliged to pay zakat. This is because, with the zakatable wealth disappearance, the *nisāb* that is the *maḥl* of obligation also disappears. Hence, the owner is no longer obliged to pay zakat or replace the damage or loss. The owner has only to pay zakat for the undamaged zakatable wealth.⁷⁴³

As for the ruler or his representative who lost zakat that is under his care, according to the Hanbalīs, if zakat is damaged unintentionally, he is not obliged to replace it because he represents the recipients.⁷⁴⁴ The Shāfi'īs also have a similar view. A ruler does not need to replace any unintentional losses made since he is a representative of the recipients. However, they differentiate between losses made because of a delay with and without the permission of the recipients. If the ruler delays the payment without the permission of the *fuqarā'*, he has to compensate any losses incurred. The reason is because the *fuqarā'* themselves have the capacity to transact, that is, they have full authority in deciding what to do with their wealth. Anyone who damages or loses their wealth without their permission must compensate them for the losses. On the other hand, if the losses incurred during a delay that the *fuqarā'* give their consent for then the

⁷⁴² Ibn Qudāma, *al-Mughnī*, v. 2, 543.

⁷⁴³ Al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 173.

⁷⁴⁴ Ibn Qudāma, *al-Mughnī*, v. 2, 504-5.

ruler is not obliged to compensate them. The reason is that permission granted to the ruler has made him a representative of the *fuqarā'*.⁷⁴⁵

The compensation that the defaulter must pay, according to the majority of jurists, depends on the available zakat as well as his wealth. The jurists are also in agreement that the defaulter only has to pay if he has the wealth to pay the due.⁷⁴⁶ According to the Ḥanafīs, if zakat collected becomes damaged under the zakat administrator's keep, the damages will be deducted from his portion of zakat because the zakat that he should receive is actually a fee of his work. Thus when he fails to perform his task, he is not entitled to any fee.⁷⁴⁷ The Shāfi'īs, who have a slightly different view, maintain, however, that if zakat becomes damaged in the hand of a collector before it is given to the ruler and without any negligence involved, his pay should be paid from the *bayt al-māl* and not from the zakat revenue.⁷⁴⁸

Based on the above views among classical jurists, it can be concluded that they insist that the exact amount of zakat that is paid by the owner is channelled to the recipients. Any losses of zakat incurred prior to the receipt by the rightful recipients must be replaced by the neglectful defaulter.

In Malaysia, there were several occasions when the MAINs incurred investment losses where the investments were also financed by zakat funds. In February 1994, for example, Baitulmal of MAIWP lost RM2 million in a public listed company, Petronas Dagangan Berhad. Zakat was suspected to be involved since all the revenues at MAIWP was deposited in the Baitulmal consolidated account and the disbursement policy for zakat was governed by the Baitulmal Committee which is also responsible for

⁷⁴⁵ Al-Nawawī, *Kitāb al-Majmū'*, v. 5, 306; Ibn Qudāma, *al-Mughnī*, v. 2, 505.

⁷⁴⁶ Al-Maqdisī, *al-Sharḥ al-Kabīr*, v. 2, 464; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 2, 174-6; al-Azharī, *Jawāhir al-Iklīl*, v. 1, 141-2; al-Nawawī, *Kitāb al-Majmū'*, v. 5, 309-10; Ibn Qudāma, *al-Mughnī*, v. 2, 542-3.

⁷⁴⁷ Ibn 'Abidīn, *Radd al-Mukhtār*, v. 3, 284; al-Sarakhsī, *Kitāb al-Mabsūṭ*, v. 3, 9.

⁷⁴⁸ Al-Nawawī, *Kitāb al-Majmū'*, v. 6, 152.

zakat besides other assets.⁷⁴⁹ MAIWP also incurred losses amounting to RM147,707 and RM2,092,074 in 1997 and 1998 respectively in its investment shares. During the period, two of its subsidiaries Syarikat Baitulmal Zenith Battery Sendirian Berhad and Baitulmal Wilayah Sang Kancil Sendirian Berhad were also dissolved due to insolvency.⁷⁵⁰

The MAINs have taken several measures in dealing with the problem of zakat loss. In the state of Terengganu, when RM11,200 was found lost in 1 Mac 1995 due to the negligence of the personnel in charge, the *fatwā* committee of the state of Terengganu ruled that the loss must be replaced by the perpetrator.⁷⁵¹ MAIWP in 1992, when some of its investment of zakat in unit trust funds incurred huge losses due to an economic downturn in the country, consulted the Mufti at the time for the appropriate action to deal with the losses. The Mufti then advised them not to withdraw the invested zakat until its value return to its par. He also advised that the invested zakat is channelled to other investment vehicles which can increase its value.⁷⁵²

Besides these actions in dealing with the loss of zakat, scholars also suggest some other measures to control the possible loss associated with investment. Possible losses of investment may be avoided by due diligent study on the viability of projects selected prior to the decision for investment being made. A thorough study of the possible risk and employment of appropriate risk management techniques have been proven successful in reducing, if not eliminating, the risks involved.⁷⁵³ Anwar, for example,

⁷⁴⁹ Azhar, Development of Secular and Religious Taxation in Peninsular Malaysia, 331-2.

⁷⁵⁰ MAIWP, Laporan Tahunan 1998, 73.

⁷⁵¹ See *fatwā* issued by the Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu in its 10th Meeting on 14 Feb. 1999.

⁷⁵² Interview with Rafidah Ab. Rahman.

⁷⁵³ Graham and Dodd, *Security Analysis*, 38; Aḥmad ʿAbd al-ʿAlīm ʿAbd al-Laṭīf, “Tafīl Dawr al-Zakā fī Mukāfaḥat al-Faqr bi al-Istifāda min al-Ijtihādāt al-Fiqhiyya (paper presented at the 18th Annual Majmaʿ al-Fiqh al-Islāmī, Kuala Lumpur, 9 -14 July 2007), 18.

suggests that it is made into a requirement that the zakat fund is invested in a well diversified portfolio to minimize the likelihood of loss.⁷⁵⁴

6.10 External Sources of Financing

External sources of financing are funds other than zakat which are used to finance the earlier stages of zakat investment projects.⁷⁵⁵ The sources can be utilized when collected zakat is insufficient to finance the desired projects and will be paid back with zakat funds in the future. The advantage of utilizing the external sources of financing especially at the initial stages of development when projects are yet to make a profit is that, it may resolve the problem of utilizing zakat for a long period of time without benefiting the recipients and thus avoiding the prohibited delay.

The funds can be sourced from both public and private institutions as well as from individuals. The sources of financing can be voluntary contributions or grants, interest free loans or other modes of financing which are approved by the Islamic law.⁷⁵⁶ The establishment of modern Islamic banking in today's world has introduced many forms of financing which are approved by the Islamic law and widen the opportunity of such financing.

Even if we looked back at the medieval times, external sources of financing in particular debt financing for the sake of the recipients and others which can be paid later with zakat were already allowed. Such financing can be deduced from the types of debtors or *ghārimūn* allowed to receive zakat.

⁷⁵⁴ Muhammad Anwar, , "Financing Socio-Economic Development With Zakāt Funds", *Journal of Islamic Economics*, 4:1 & 2 (1995), 19.

⁷⁵⁵ Muḥammad Farah, al-Tawjīh al-Istithmārī li al-Zakā, 20.

⁷⁵⁶ M. Nejatullah Siddiqi, "An Overview of Public Borrowing in Early Islamic History", *Review of Islamic Economics*, 2: 2 (1993), 3-6.

It has been decided among the majority of jurists that there are two types of debtors who are allowed to receive zakat: those who borrow to cover his needs and other peoples' needs and those who borrow to settle disagreement or to avoid clashes among society.⁷⁵⁷ According to al-Nawawī, Abū al-Faraj al-Sarakhsī viewed that a loan made to build mosque and to entertain guest are similar to loans taken to cover one's needs.⁷⁵⁸

Abū Rafīʿ reported that the Prophet borrowed a young female camel from a man. When some camels from those collected as zakat were given to him, he asked Abū Rafīʿ to pay back the man from one of the camels. Upon checking the camels, Abū Rafīʿ came back and said that he could only find older (about seven years old) camels. The Prophet said, "Give that camel to him."⁷⁵⁹ Al-ʿAsqalānī when commenting on the hadith noted that the debt was incurred for helping someone meet his basic needs. This was given that the Prophet was disallowed from taking any zakat. He further maintained that this suggests that the state could borrow from the *bayt al-māl* to spend on those who are in need and the loan can be paid with future zakat revenue.⁷⁶⁰ This implies that zakat can be used to pay any borrowing made for public purposes.

The diversity of debts that can be paid with zakat shows that debt financing may be utilized to finance many developmental projects which benefit the Muslim society. The implication of allowing borrowing for the sake of others need, for example, allows the utilization of zakat to pay for the debts on community projects as long as it benefits the Muslim society. Zakat institution as the manager of zakat who has direct control over the fund and is also familiar with the Muslims' needs, can become a vehicle that borrow

⁷⁵⁷ Ibn Qudāma, *al-Mughnī*, v. 2, 704; Ibn Taymiya, *Majmūʿ Fatawa Ibn Taymiya*, v. 25, 90; al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 179-81.

⁷⁵⁸ Al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 181-2. Abū al-Faraj al-Sarakhsī (d.494H) was a Shāfiʿī scholar and the author of *al-Fiqh al-Kabīr (al-Imlāʾ)*.

⁷⁵⁹ Al-Bukhārī, *al-Jāmiʿ al-Ṣaḥīḥ*, hadith no. 2390, v. 2, 172.

⁷⁶⁰ Aḥmad ibn ʿAlī ibn Hajar al-ʿAsqalānī, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, (Riyadh: Maktabat al-Malik Fahd, 2001) v. 5, 69-71.

to finance developmental projects for the Muslims. When the loan matures, zakat can be utilized to pay for the loan using the allocations for the *ghārimūn*.

6.11 Conclusion

From the above views among the classical jurists regarding the allocation of zakat to the recipients, the study finds that the types and scopes of zakat investment that can be undertaken are to a certain extent limited. According to the majority of classical jurists, the state had the authority to choose the recipients of zakat and it should distribute zakat according to their need. The first provision allows the state to spend zakat at its discretion and this gives the state the choice to invest zakat if it wishes to. The second provision, however, dictates that an allocation for investment is only possible if investment is considered as a type of need that must be fulfilled for the recipients. For the Shāfi'īs and some Hanbalīs, who suggest that an amount of zakat that can cover the recipient's *kifāyat al-umr* is given to the recipient, the provision to invest zakat was already considered as part of the recipients' need. The provision for investment, nevertheless, was limited for the acquisition of working tools and assets that can assist the individual recipients to generate their future income. The study also finds that the allocation for investment also is only possible when the collected zakat is in abundance. The reason for this is because zakat must be paid to fulfil the consumptive and functional needs of the recipients first since their needs are more demanding.

From the previous chapter, it was asserted that the majority of classical jurists insist on a full conference of ownership of zakat to individual recipients. The above discussion of allocation of zakat under the *fī sabīl li Allāh* group suggests that under the liberalized definition of *fī sabīl li Allāh*, this principle only applies to the groups of recipients other than this *fī sabīl li Allāh* group. For under the broad definition of *fī sabīl li Allāh*, zakat can be spent for all deeds that benefited Islam and Muslims. The significance of this

view is that, for investment projects where an absolute *tamlīk* cannot be given whether because of the need for centralized coordination or huge costs, the financing can be made via the distribution for this group. Allocation of zakat under this group also lessens the risk of payment of zakat to non-recipients of zakat.

Zakat investment also can be financed through other mechanisms. One is the excess of zakat revenue after it is distributed to fulfil all of the recipients' need. Financing zakat investment with the excess revenue is more advantageous than via allocation of zakat to the groups of recipients because the zakat institutions can invest it in a less strict condition. Allocation for investment via the distribution for the groups of recipients, must be made according to each groups' need. Allocation for investment from excess of zakat revenue on the other hand, can be made without the need to follow this condition.

Data on the collection and distribution of zakat in Malaysia showed that this excess is prevalent in the Malaysian states. The solution given by the classical jurists for this excess is to transfer it to the state which has too few zakat to fulfil all its recipients' need. It was found that due to the restrictive jurisdiction of the Islamic law that controls Islamic religious affairs including zakat, transfer of excess of zakat from one Malaysian state to another will be difficult. Furthermore, almost all the states have had surpluses of zakat.

Another mechanism to source zakat for investment is an advance payment of zakat. This type of financing is helpful especially during the period when available zakat is insufficient to finance investment activities. This type of financing, however, depends much on the willingness of the owner of zakatable wealth to pay in advance since zakat becomes an obligation only once all the prerequisites to pay zakat are fulfilled.

Modern Muslim scholars also suggested zakat loans as a source of financing to assist entrepreneurs who are in debt and need financing, but have no ability to acquire

conventional financing. The study finds that the suggestion to allocate zakat loans under the group of *ghārimūn* as inappropriate since zakat for this group can be provided free and does not require a payback. Instead the study supports the view that this kind of financing should be allocated under the group of *riqāb* that is for those marginalised by society.

Finally, in financing investment of zakat, there is also an alternative source of financing. External sources of financing like grants or Islamic loans could be used to finance zakat investment projects that require large capital and some period of time before they benefit the recipients. The above discussion reveals the diversity of debts that can be paid with zakat, opening the opportunity to employ debt financing to finance many developmental projects which benefit the Muslim society.

Chapter Seven

Zakat Investment in Malaysia (Part I)

7.0 Introduction

From the late 1980s onwards, there were marked increments in the collection of zakat in Malaysia. They were led mostly by the initiatives taken by the relevant authority to increase the collection of zakat on wealth and also the restructuring that took place in the administration of zakat at the states' Majlis Agama Islam Negeri (MAIN). Combined with the legal approval and recognition accorded to investment of zakat by the *fatwās* issued by well-known Islamic organizations, the marked increments in the collection of zakat encouraged and enabled zakat institutions in Malaysia, especially those with high zakat collection, to increase the depth and the width of zakat investment at their institutions. The increments not only enabled the zakat institutions to invest zakat in typical expenditures for the dissemination of Islamic teachings and investment of surpluses in the financial system, but also to establish subsidiaries which can further benefit the recipients whether directly or indirectly. In addition to this, the zakat institutions have been able to introduce more structured capital assistance for the poor recipients as well as providing them with the opportunities and facilities which empower them with the necessary skills to enter the labour market.

The following two chapters are two parts of an examination of current [policy and practice of zakat investments in Malaysia. In this chapter, the study looks briefly at the general outlook of the management of zakat in the country. The purpose of this is to understand the background of the management of zakat investment which operations will be discussed in details later in the next chapter.

The chapter begins with an examination of the laws and regulations which govern the management of zakat in the country, and the institutions that are involved in managing zakat. In looking at these zakat managers, the study looks briefly at their organization structures and their overall performance in administering zakat.

In this chapter also, the study seeks to discern the amount of zakat that is available for investment in Malaysia. The amount can be known through an examination of the amounts of collection and distribution of zakat in each state. Next, the chapter analyzes the factors that determine the amounts of collection. This is to understand the reasons behind the discrepancies of the amount of collection of zakat among the states which will assist us in analyzing possible conduits for the zakat institutions to increase their future zakat revenue. In examining the amount of distribution of zakat, the study examines the allocations of zakat made to each groups of recipients. This is to see the pattern of zakat distribution among the groups of recipients. The pattern enables us to identify which among the recipients received more allocation of zakat than others particularly for the purpose of investment. From the amount of zakat collection and distribution, the study can deduce the amount of undistributed or excess zakat revenue. This excess of zakat is important for zakat investments as it is also a source that can be used to finance them.

7.1 Management of Zakat in Malaysia

The Constitution of Malaysia, or the Federal Constitution, is the supreme law of the country. The regulation of Islamic laws, which are only applicable to Muslims, such as matrimonial law, charitable endowments (*waqf*), zakat, bequests, inheritance and offences against religion under the ninth schedule of the Constitution are specified to be regulated by state enactments, and the power to legislate on these matters is vested in the state legislators and the sultans.

Under the legislation, in each state, a council, commonly known as Majlis Agama Islam Negeri (State Religious Islamic Council) or MAIN, is established and accorded extensive jurisdiction over the administration of religious affairs, except on matters relating to the establishment of *fatwās* and the adjudication of Islamic laws which have been assigned to the Jabatan Mufti (Office of the Mufti) and the Mahkamah Syariah (Shari'a Court) respectively. Accordingly, these laws only apply in the state concerned and are administered by a separate court system from the federal ones, whose constitution, organization and procedures are under the jurisdiction of the states. The MAINs, however, still act as the main authority regarding Islamic religious affairs in the state ⁷⁶¹ and are given the right to formulate general policies and control mechanisms of their execution.

The laws of zakat are specifically provided under the states' respective administration of Islamic law enactments. Only in the states of Kedah and Sabah are there independent zakat enactments which, compared to provisions of zakat in the administration of Islamic law enactments, are more systematic substantive measures that provide better

⁷⁶¹ This is true for all states, except for the Federal Territories where the law of zakat and its administration are governed by the Federal Government. See Suwaid Tapah, "Perlaksanaan Undang-undang Islam di Malaysia: Realiti dan Harapan", <http://kias.edu.my/pelundang.htm> (accessed on 6 Aug. 2008). See also Article 3, Federal Constitution of Malaysia.

facilities for zakat enforcement.⁷⁶² Since the enactments differ from one state to another, the organizational structures of zakat management and the rules governing zakat matters—for example, the obligatory zakatable items, as well as the punishment for various zakat-related offences—to a certain degree also differ from one another.⁷⁶³ Apart from these enactments, there are also several subsidiary legislations which provide additional provisions to support the administration of the enactments.⁷⁶⁴

Besides the MAINs, the administration of zakat is also monitored and assisted by two federal departments, the Jabatan Kemajuan Islam Malaysia (Department Of Islamic Development Malaysia), commonly known as JAKIM, and the Jabatan Wakaf, Zakat dan Haji (Department of Wakaf, Zakat and Pilgrimage). JAKIM is responsible for ascertaining policies pertaining to the development and advancement of Islamic affairs in Malaysia by fostering the harmonization of the administration of Islamic laws (including those relating to zakat) and streamlining the enforcement mechanisms of the laws, whereas the Jabatan Wakaf, Zakat dan Haji plays a significant role in ensuring a more systematic and effective administration of *waqf* (endowment), zakat and pilgrimage.⁷⁶⁵

7.2 Majlis Agama Islam Negeri (State Religious Islamic Council)

As noted above, the administration of Islamic religious affairs in each state is governed by its respective Majlis Agama Islam Negeri (MAINs). This includes control and power

⁷⁶² Siti Mashitoh, “Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan”.

⁷⁶³ Mohd Daud, “The Malaysian Zakat System: Law and Policy Reform”, 20-22.

⁷⁶⁴ Some examples are Peraturan-Peraturan Zakat dan Fitrah (Perak) 1975, Peraturan-Peraturan Zakat dan Fitrah (Johor) 1962, Peraturan-Peraturan Pungutan Zakat dan Fitrah (Negeri Pulau Pinang) 1979, Kaedah-Kaedah Zakat Dan Fitrah (Pahang) 1970 and Kaedah-kaedah Baitulmal (Wilayah Persekutuan) (Perbelanjaan dan Penggunaan) 1980.

⁷⁶⁵ See Appendix C.

for the MAINs to oversee the financial aspects of the state religious affairs. For this purpose, a fund known as Baitulmal that consists of all the moneys and properties, movable or immovable, accrued under Islamic law, was established at each of the MAINs. The states' enactments for the administration of Islamic law clearly declare this,

“A Fund to be known as Baitulmal is hereby established. The Fund shall consist of all the moneys and properties, movable or immovable, which by Islamic Law or under the provisions of this Act or rules made thereunder, accrue, or which are contributed by any persons, to the Fund.”⁷⁶⁶

Among the wealth accrued at the Baitulmal are *zakat*, *waqf*, unclaimed wealth (*luqata*), expiation for violating the restrictions of certain obligatory religious acts (*fidya*), etc. Normally, *zakat* makes up more than four-fifths of these MAINs' revenues.⁷⁶⁷ Majlis Agama Islam Selangor's revenues from *zakat* in 2006 and 2007 for example were RM161 mil. and RM203 mil. or 93.5% and 94.6% respectively of the total revenues.⁷⁶⁸ As for Majlis Agama Islam Wilayah Persekutuan, its revenues from *zakat* in 2007 and 2008 represented 88.3% and 90.1% of its total revenues.⁷⁶⁹

The MAIN is given complete authority to administer the Baitulmal fund whereby it may sell, realize or dispose any investment, asset or money vested in the MAIN and invest any of the proceeds from these activities. Since the funds entrusted to their management are religious funds, any economic activities that are undertaken and

⁷⁶⁶ Sec. 60 (1), Administration of Islamic Law Act (Federal Territories) 1993 reads as above. For the establishment of Baitulmal in other states, see for example Sec. 39, Administration of Islamic Law Enactment (Johore) 1959; Sec. 36(1), Administration of Islamic Law Enactment (Malacca) 1991.

⁷⁶⁷ Interestingly, this situation has been recorded and noted since the early years of the 20th century. The Statement of Account of the Majlis Agama dan Isti'adat Melayu Kelantan in 1916, for example, recorded that more than 95% of the MAIN's income was derived from *zakat*. See Abdul Aziz, *Zakat and Rural Development in Malaysia*, 124.

⁷⁶⁸ MAIS, Laporan Tahunan MAIS 2007, 15.

⁷⁶⁹ MAIWP, Laporan Tahunan 2008, 91.

funded by these funds must conform to *Shari'ah*.⁷⁷⁰ Considering that they too are public trust, the above rights are also subjected to other relevant written laws, for instance, the Trustee Act 1949 (Act 208) which governs the investment of trust funds.⁷⁷¹ The above allowances, as explained by some provisions, are for the purpose of developing and increasing the income of these properties for the sake of Muslims' socio-economic wellbeing.⁷⁷²

Likewise, in each of these states, the MAIN is the only institution granted the administration and adjudication rights over zakat.⁷⁷³ It is accorded exclusive rights to collect and distribute zakat, to devise rules for its collection, administration and distribution, to appoint *'amil*, and to establish punishment for failure or wrongful payment of zakat.⁷⁷⁴ Its authority over zakat can be seen when any person who refuses or wilfully fails to pay zakat through an appointed *'amil*, or any other person authorized by the MAIN to collect zakat, will be considered as an offender and upon conviction will be liable for a certain fine or imprisonment, or both.⁷⁷⁵ Even though there are allowances in *Shari'ah* where the owner of zakat can choose to pay his zakat directly to the recipients, he is, however, obliged to follow the state's law. A fatwa by the Selangor Islamic Law Advisory Committee clearly explained this:

⁷⁷⁰ See for example, Sec. 81, Administration of Islamic Law Enactment (Selangor) 2003.

⁷⁷¹ See for example, Sec. 7(2)(d), Administration of Islamic Law Act (Federal Territories) 1993 which pertains about the powers bestowed upon the MAIN to invest the fund under its control including zakat. The investment, however, must conform to the requirements outlined in the Trustee Act 1949.

⁷⁷² See Sec. 7, Administration of Islamic Law Act (Federal Territories) 1993; Sec. 42, Council of Religion and Malay Custom Enactment (Kelantan) 1994.

⁷⁷³ This is true except for Jabatan Zakat Kedah (*Zakat Department of Kedah*), which is the zakat institution for the state of Kedah. The department is directly under the purview of the Sultan. For ease of discussion, the Jabatan Zakat Kedah will be treated as a department under the MAINs, similar to other zakat institutions.

⁷⁷⁴ See the enactments for administration of Islamic laws in each state and also the enactments for zakat in Sabah and Kedah.

⁷⁷⁵ See for examples, Sec. 33 and 34, Syariah Criminal Offences (Federal Territories) 1997; Sec. 82, 83 and 89, Syariah Criminal Offences (Malacca) 1991.

“Even though in Islamic law distribution of zakat directly by individuals and not through the ruler is valid if paid to deserving recipients, the act of going against the ruler’s law and regulation is considered as an offence, because in Islam, obedience to ruler or Ulil Amri in virtues is an obligation.”⁷⁷⁶

Being state legislatures, the laws, however, may be applied in their respective state only, and if there are any contradictions between the federal and states’ Islamic law enactments, the federal law shall prevail and the states’ Islamic law enactments will be void to the scope of inconsistency.⁷⁷⁷

The rights given to the MAIN to transact any wealth in the Baitulmal have enabled it to devise many programmes and projects in the distribution of zakat to guarantee that the recipients receive their rights and also to ensure that the *faqīr* and *miskīn* become independent from zakat in the long run. Some MAINs also partake in investment activities utilizing undistributed zakat funds through investment in financial products and fixed assets. This type of investment is not only meant to increase the zakat fund which can further widen and deepen the distribution of zakat but also to expand the Muslims’ assets as a whole.

⁷⁷⁶ The *fatwā* was issued by the Jawatankuasa Perundangan Hukum Syarak Selangor on 7 June 2007, (Sel.P.U.22). The above *fatwā* has been translated by the researcher from its Malay version which reads, “Walaupun dari segi syara’, mengagihkan zakat secara persendirian tanpa melalui pemerintah adalah sah sekiranya diagihkan kepada asnaf yang layak, tetapi perbuatan melanggar peraturan dan undang-undang pemerintah dalam perkara kebaikan adalah berdosa, kerana di dalam Islam patuh dan taat kepada pemerintah atau Ulil Amri dalam perkara kebaikan adalah wajib”, (retrieved from <http://www.e-fatwa.gov.my> on July 23rd, 2008). A similar *fatwā* was also issued by the National Fatwa Committee in 2006. See JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 75.

⁷⁷⁷ Article 75 of the Federal Constitution of Malaysia states that a federal law shall prevail over any inconsistent state laws, including its Islamic law enactments. The limitations are also clearly pronounced in the administration of Islamic law enactments. See for example, Sec. 1(1), Administration of Islamic Law Act (Federal Territories) 1993; Sec. 86 and 87 Administration of Islamic Law Enactment (Selangor) 2003; Sec. 1(1), Zakat and Fitrah Enactment No.6 (Sabah) 1993.

7.3 The Zakat Managers

Prior to the 1990s, each of the religious matters at the MAINs was managed by a separate division of the councils, normally a zakat division or unit in the Baitulmal department. This division or unit was further divided into sub-divisions or sub-units of zakat administration, collection and distribution.⁷⁷⁸

From 1990 onwards, the structural organization for the zakat administration became more diversified as some of the MAINs started to incorporate their collection⁷⁷⁹ and distribution units by establishing subsidiaries to manage their zakat collection, or both the collection and distribution of zakat. Through incorporation, the institutions adapted a corporate system of administration, which is more cost effective, by reducing bureaucratic red tape, making use of effectual marketing strategies, employing professional personnel and emphasizing staff welfare.⁷⁸⁰

Currently there are three states in Malaysia which have delegated the duty of collection and distribution to a private company and four others which have incorporated their collection units (the distribution of zakat is still managed by their Baitulmal). The incorporated institutions are still under the governance of their respective MAINs since the shareholders or trust-holders are the state government and the MAINs.⁷⁸¹

A number of studies on the collection and distribution of zakat at these zakat institutions attest to a notable growth rate in collection from the incorporated

⁷⁷⁸ Ahmad Shahir, "Paradigma Pengurusan Institusi Zakat: Pengalaman Zakat Selangor (MAIS)".

⁷⁷⁹ One of the reasons behind the incorporation of the zakat collection unit is to attract more zakat payment from professionals and companies compared to the rice planters who have been the main traditional payers of zakat. See Mohamed Dahan, "Pendekatan Kepada Cara Pengagihan Dana Zakat Yang Dinamik Sesuai dengan Suasana Semasa", 40.

⁷⁸⁰ Ahmad Shahir, "Paradigma Pengurusan Institusi Zakat: Pengalaman Zakat Selangor (MAIS)".

⁷⁸¹ See Appendix C.

institutions. The growth was attributed to changes in their management style and utilization of extensive computerized systems.⁷⁸² However, interestingly, a study argued that even though a continuous increase in collection was observed at these incorporated institutions, statistically, the growth during the incorporation period has no real significant impact on the total collection of zakat. The study concluded that the growth was not solely attributed by their corporate management adaptation, but also affected by other factors, such as an increase in the number of payers and the amount of zakat paid to these institutions.⁷⁸³ The above studies indicate that incorporation of zakat institution has improved significantly the efficiency in collection of zakat which resulted in higher amount of zakat collection. However, the amount of collection was also influenced by other factors like the number of payers and the amount of zakat paid to these institutions.

Studies on the distribution management performance of these zakat managers have shown different levels of efficiency between them, attributed to different management styles,⁷⁸⁴ comprehensiveness of computerized distribution systems and ratio of officers in charge⁷⁸⁵. Several studies have also raised concerns about high retaining ratios between collected and distributed zakat, where quite substantial amounts of zakat were

⁷⁸² Md Zyadi Tahir and Mariani Majid, "Prestasi Kutipan dan Agihan Zakat di Malaysia", in *Pancasidang Seminar Pengeluaran Awam dan Swasta: Justifikasi dan Realiti di Malaysia* (Fakulti Ekonomi, Universiti Kebangsaan Malaysia), 293-306; Abd Halim Mohd Noor et al., "Prestasi Pengagihan Dana Zakat di Malaysia" in *Isu-isu Kontemporari Zakat di Malaysia*, ed. Abdul Halim Mohd Noor (Malacca: Institut Kajian Zakat Malaysia, 2005), 256.

⁷⁸³ Nor Ghani Md Nor et al., "Can Privatization Improve Performance? Evidence from Zakat Collection Institutions" (paper presented at Bengkel Ekonomi Islam, Universiti Kebangsaan Malaysia, Selangor, 2001).

⁷⁸⁴ Abdullah Ibrahim, "Agihan Zakat Menurut Prinsip Siayah Shariyyah", (paper presented at Kolokium Keberkesanan Zakat Negeri Selangor, Selangor, 17 May 1999).

⁷⁸⁵ Nazifah Mustaffha, "Zakat Disbursement Efficiency: A Comparative Study of Zakat Institution in Malaysia" (MSc. diss., International Islamic University Malaysia, 2007), 53-4; Paimuzi Yahya, "Pengagihan Zakat di Malaysia" (M.A. diss., University of Malaya, 1996), 96.

found to be retained and not disbursed in the same year of collection to the recipients.⁷⁸⁶ Continuous high retaining ratios can be caused by high unexpected collections and a lack of suitable recipients, both of which can be associated with inefficient planning and distribution of zakat at the zakat institutions.

Evidences of inefficiencies also can be construed from studies that found an inadequacy in the zakat institutions monitoring system of the recipients' progress⁷⁸⁷, usage of performance measurements that may not reflect its efficiency and effectiveness and some shortfalls in their management accounting practices,⁷⁸⁸ which increase the risk of default and breach of trust among the zakat managers. Other studies on the administration of zakat at these institutions also showed evidence of inefficiencies like lack of personnel, outdated database of recipients, lack of internal control system including coordination between collection and distribution units, incomplete accounting system and lack of interaction between the managers and the recipients.⁷⁸⁹

⁷⁸⁶ Wahairi Mahmud, "Kesan Penubuhan Pusat Zakat Ke atas Pentadbiran Zakat di Negeri Pahang" (M.A. diss, University of Malaya, Kuala Lumpur, 2001), 157; Zulkefly et al., "Pendapatan dan Sasaran Perbelanjaan Dana Zakat: Pengalaman di Negeri Perak, Kedah, Selangor dan Negeri Sembilan" in *Prosiding Muzakarah Pakar Zakat*, ed. Hailani Muji Tahir et al. (Kuala Lumpur: Univision Press Sdn Bhd. 2004), 79-94.

⁷⁸⁷ Zazli Zainuddin, "The Management of Zakat, Sadaqat and Awqaf and Their Contributions Towards Muslim Educational Purposes in Malaysia" (MSc. diss., International Islamic University Malaysia, 1998), 98.

⁷⁸⁸ Jamaliah Abdul Majid, "Performance Measurement of Malaysian Zakat Institutions: Perceptions of the Senior Managers of the Malaysian Zakat Institutions" (M.A. diss., International Islamic University Malaysia, 2004), 56. Another note for concern is that there is no provision found in the enactments which insist the segregation of zakat from other funds in the Baitulmal. Interestingly one such provision found in Malacca's administration of Islamic law enacted in 1991 has been left out in the new enactment. See Sec. 36(2), Administration of Islamic Law Enactment (Malacca) 1991, which requires that all zakat collected by the Baitulmal must be paid to a separate account in the Baitulmal.

⁷⁸⁹ Muhammad Syukri Salleh, "Lokaliti Zakat: Satu Cadangan Teoritis" in *Zakat Pensyariatan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir, (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 214-19; Azizah Dolah et al., "Kajian Terhadap Amalan Perakaunan Pengurusan dalam Aspek Agihan Dana Zakat dari Perspektif Pengurus Zakat", in *Isu-isu Kontemporari Zakat di Malaysia*, ed. Abdul Halim Mohd Noor (Malacca: Institut Kajian Zakat Malaysia, 2005), 218-9.

The above studies reveal that the organizational structures of the administration of zakat in Malaysia can be divided into three forms. Several of the MAINs manage zakat directly, while the rest delegate the duty (either collection only or both collection and distribution of zakat) to incorporated zakat institutions. The incorporation of these institutions has improved the collection of zakat at the respective states but it cannot be claimed as the only factor that increases the collection. The studies also reveal that there are a lot of inefficiency issues at these zakat institutions, regardless of whether they are directly under the MAINs or they are the incorporated zakat institutions.

7.4 Collection and Distribution of Zakat

In this part, the chapter briefly examines the collection and distribution of zakat in Malaysia in an attempt to enumerate the amount of zakat that is available for investment. The study tries to achieve this by examining the amount of zakat collection and distribution in each state in Malaysia, especially in the last five years (2004-2008). The study then deduces the amount of undistributed zakat from the amount of collection and distribution. This excess of zakat is an important source of financing for zakat investment since it is, theoretically, the balance of zakat revenue that the institution has access to after the revenue is paid to fulfil the need of all the recipients.

7.4.1 Collection of Zakat

The right to collect zakat in Malaysia is legally accorded to the MAINs in each state. They are empowered to establish rules pertaining to the collection of zakat, such as condemning any person who is liable to pay zakat and refuses or wilfully fails to pay the zakat to a conviction which makes him liable to a fine or to imprisonment, or

both.⁷⁹⁰ The MAIN is also given the authority to determine, from time to time, the amount of zakat that an eligible owner has to pay.⁷⁹¹

In collecting the zakat, seven of the MAINs collect it through an incorporated subsidiary established to collect zakat on their behalf, while another seven—from the states of Perlis, Johore, Kedah, Terengganu, Kelantan, Perak and Sabah—collect zakat through a collection unit under their Baitulmal Division.⁷⁹²

The total amount of collection of zakat in the country in 2008 was RM1.04 billion,⁷⁹³ which was a significant amount compared to just RM61 million collected in 1991. In the last five years (2004-2008) alone, the total zakat revenue on average increased by 20.6% each year. This is again a considerable increase compared to the average growth in the Malaysian per capita income of 11.9% throughout the same period.⁷⁹⁴

Among the 14 states, Selangor collected the highest zakat revenue in 2008 at RM244,409,628, followed by Wilayah Persekutuan at RM211,364,698 and Johore at RM100,737,540. The lowest collections recorded were RM23,134,583 in the state of Perlis and RM23,799,155 in the state of Sabah. Out of the fourteen states, only three states—Selangor, Wilayah Persekutuan and Johore—recorded a collected amount that exceeded RM100 million. Six of the states—Sarawak, Penang, Negeri Sembilan, Malacca, Perlis and Sabah—collected less than RM50 million worth of zakat in a year.⁷⁹⁵

⁷⁹⁰ Sec. 82(1), Syariah Offences Enactment (Malacca) 1991; Sec. 16, Syariah Criminal Offences (Federal Territories) 1997 (Act 559); Sec. 21, Syariah Criminal Enactment (Selangor) 1995.

⁷⁹¹ Sec. 87(2)(a) Administration of Islamic Law Enactment (Negeri Sembilan) 2003; 76(2)(a) Administration of Islamic Law Enactment (Perak) 2004; Sec. 19, Zakat and Fitrah Enactment (Sabah), 1993.

⁷⁹² For Kedah, see Footnote no. 773 above. See also Appendix C.

⁷⁹³ PPZ MAIWP, *Laporan Zakat 2008*, 65.

⁷⁹⁴ Bank Negara Malaysia, *Annual Reports*, various years, <http://www.bnm.gov.my/files/publication/ar/>. See Appendix B for the annual percentage growth in the amount of collection in each state from 2004 till 2008.

⁷⁹⁵ See Appendix B for the amount of zakat collection in each state from 2004 till 2008.

It is also worth noting that the composition of zakat on wealth compared to *zakat al-fiṭr* in the total zakat collection during this period, was very high for all states.⁷⁹⁶ Zakat on wealth observed for the last five years, for example, was composed of more than 90% of the total collection at LZS and PPZ MAIWP.⁷⁹⁷ In addition to this, more than 50% of the total zakat on wealth collected was contributed by zakat on income.⁷⁹⁸ For more than half a century since the establishment of centralized zakat collection, the collection of *zakat al-fiṭr* has always been the main contributor to the total zakat revenue. The trend, however, started to change in the mid-1990s⁷⁹⁹ as a result of the initiatives taken by the relevant authorities to increase the collection of zakat on wealth, particularly through the issuance of new *fatwās* obliging the payment of zakat on income⁸⁰⁰ from 1992 onwards.⁸⁰¹ The incorporation of the zakat collection units during these periods may

⁷⁹⁶ At LZS for example, zakat on wealth made up about 94% of the total zakat collection in 2006 and 2007. At MAIWP, zakat on wealth contributed about 96% and 97% of the total collection in 2006 and 2007 respectively. See LZS, *Laporan Pengurusan Zakat Selangor 2007*, 44; PPZ MAIWP, *Laporan Zakat 2007*, 60; MAIWP, *Laporan Tahunan 2007*, 84. Prior to the 1990s, the composition of *zakat al-fiṭr* was higher compared to zakat on wealth in the total collection of zakat. See 3.3 for more discussion on this.

⁷⁹⁷ See Appendix D.

⁷⁹⁸ Zakat on income at LZS for example, contributed 51% and 49% of the total zakat collection in 2006 and 2007 respectively. At PPZ MAIWP, it contributed 62% and 65% of the total collection in 2006 and 2007 respectively. See LZS, *Laporan Pengurusan Zakat Selangor 2007*, 44; PPZ MAIWP, *Laporan Zakat 2007*, 60. Zakat on income is a component of zakat on wealth. Other components of zakat on wealth collected in Malaysia are zakat on business, savings, shares, livestock, gold, silver, agriculture, etc.

⁷⁹⁹ Prior to this, zakat collection in the states was primarily comprised of *zakāt al-fiṭr*. Abdul Manaf Said and A. Ghani Othman, "Menyusun Semula Sistem Zakat dan Pengurusan Baitulmal" (paper presented at Seminar Zakat, Petaling Jaya, Malaysia Jan 2-6th, 1980).

⁸⁰⁰ Zakat on income was decreed an obligation on eligible Muslims by the Muzakarah Jawatankuasa Fatwa Kebangsaan (*Meeting of the National Fatwa Committee*) in its 31st meeting on 9 December 1992. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 62-3. Currently, all the states have decreed that zakat on income is an obligation, except the state of Perak.

⁸⁰¹ A good example of the spurt of growth in collection of zakat after the issuance of *fatwās* decreeing the obligation of zakat on wealth can be seen from the increase of collection of zakat in the state of Terengganu in early 2000s. Following a *fatwā* obliging the payment of zakat on wealth made in 1998, the collection of zakat in the state has increased from RM119,394 in 1999 to RM10,140,932 in 2002. See Hasan Bahrom, "Membayar Zakat:

have further accentuated the growth in the collection of zakat on wealth. These incorporations, which put emphasis on the collection of zakat on wealth, have raised the level of consciousness among the zakatable wealth owners to pay zakat⁸⁰² and also provided them with convenient facilities to pay their zakat.⁸⁰³

7.4.2 Determinants of Zakat Collection

Investment is an act of redirecting resources from being consumed today to projects that can provide future benefits. Even though investment means forsaking current consumption, most of the time investment can only take place when the consumptive or operative needs of an economic unit have been fulfilled. In the case of zakat investment, the amount of zakat collected must be substantial to ensure that there is sufficient zakat to fulfil all the purposes of zakat distribution. In allocating zakat the zakat institution must prioritize and fulfil the consumptive and functional needs of the recipients compared to their investment need. The reason is because both of the recipients' consumptive and functional needs most of the time are more demanding and need immediate fulfilment compared to investment needs.

‘Ali, the 4th Caliph for the matter maintains that, conceptually, zakat collected should be enough to fulfil all the recipients' need. Only external factors like the eligible payers'

Kesedaran Ummah" in *Isu-isu Kontemporari Zakat di Malaysia*, ed. Abdul Halim Mohd Noor (Malacca: Institut Kajian Zakat Malaysia, 2005), 232.

⁸⁰² PPZ MAIWP and Pusat Zakat Pahang (Pahang Zakat Centre, an incorporated zakat institution that serves the states of Pahang) only collect zakat on wealth. See PPZ MAIWP, *Laporan Zakat*, various years and <http://www.zakatpahang.my/InfoPKZSejarahPenubuhan>.

⁸⁰³ Mohd Ali Mohd Noor and Hairunizam Wahid, "Kepentingan dan Sumbangan Zakat Pendapatan: Pengalaman di Wilayah Persekutuan dan Selangor" in *Zakat Pensyariatan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 125-7; Abd Ghafar Ismail and Nur Azura Sanusi, "Peluasan Kewajipan Berzakat, Jaminan Sosial dan Desentralisasi Fiskal" in *Zakat. Pensyariatan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 94-5.

refusal to pay zakat will disrupt the flow and amount of zakat collection, resulting in a deficit in zakat collection compared to the recipients' level of need. He was reported saying, "Allāh the Almighty has made an obligation upon the affluent on their wealth equivalent to the need of the poor; if the poor becomes hungry, or strike or revolt, it is due to the wealthy who have refused (their rights)...".⁸⁰⁴

Studies on zakat administration have identified several factors that influence the amount of zakat collected by a zakat institution. They include the number of payers of zakat, the amount of zakatable wealth that the payers owned, the efficiency of the zakat institutions, and the willingness of the zakat collection institution to enforce the law that obliges the payment of zakat on those eligible payers.

The number of payers of zakat depends mainly on the number of Muslims in the state,⁸⁰⁵ their eligibility, their consciousness about the obligation,⁸⁰⁶ and their willingness to perform it and pay zakat to the institutions.⁸⁰⁷ The zakat institutions in Malaysia estimated that there are a significant number of recalcitrant eligible payers.⁸⁰⁸ Lembaga Zakat Selangor (LZS), the zakat institution of the state of Selangor, for example, estimated that in 2007, only 24% of eligible individual payers actually paid zakat. From

⁸⁰⁴ Narrated by Abū Ja'far Muḥammad ibn 'Alī. See Abū 'Ubayd, *Kitāb Al-Amwāl*, 595-6.

⁸⁰⁵ Malaysian population in 2010 is expected to be 28.96 million where about 60% of them are Muslims. The two states that collected the highest amount of zakat (Selangor and Wilayah Persekutuan) have the largest number of Muslims compared to other states. Expected numbers of Muslims in 2010 in Selangor are 2.8 million (9.7% of total Muslims in Malaysia) and 0.7 million (2.4%) in Wilayah Persekutuan. In terms of population, Wilayah Persekutuan has the highest density of Malays compared to other states at about 1,912/km². Prime Minister's Department, *Ninth Malaysian Plan 2006-2010*, 238, 361.

⁸⁰⁶ Halidan, "Pengalaman Pengurusan Zakat Pahang", in *Zakat Pensyariatan, Perekonomian dan Perundangan*, 404.

⁸⁰⁷ An eligible payer may evade paying zakat through ways that are not allowed like hedging the *ḥawl* or reducing the *niṣāb* through selling the zakatable items or replacing it with other non-zakatable goods. See al-Azharī, *Jawāhīr al-Iklīl*, v. 1, 120.

⁸⁰⁸ Eligible payers of zakat are adult, free and sane Muslims who possess a certain minimum amount of wealth (*niṣāb*) for a complete lunar year (*ḥawl*). See al-Nawawī, *Rawḍat al-Ṭālibīn*, v. 2, 3-5, 41-4.

a total of 14,000 active companies in Selangor, only 817 companies paid zakat to LZS.⁸⁰⁹ In 2002, there were only 79 payers of corporate zakat in Pahang, even though there were 14,000 companies owned by Muslims in the state as recorded by the Companies Commission of Malaysia.⁸¹⁰

A few studies on compliance behaviour of zakatable owners found that their refusal to pay is mainly attributed to lack of belief on its obligation,⁸¹¹ perceived service quality,⁸¹² and low levels of zakat and religious knowledge. A study on the effect of perceived efficiency of zakat institutions in distributing zakat and the willingness of zakat owners to pay them found that there was a positive relationship between the two. Zakat owners who were satisfied with the institutions' performance in distributing zakat were more likely to pay zakat to them.⁸¹³ Another study investigating the level of compliancy in paying zakat on employment income conducted on 700 of the state of Kedah's employees in 2000 found that they were unsure with the zakat institution's efficiency in

⁸⁰⁹ Noormala, "Mengapa Masih Ramai Tidak Tunai Zakat", *Asnaf*, 3 (2008), 10.

⁸¹⁰ Out of these 79 payers, 20 of them are corporate organizations based on Kuala Lumpur but with operational offices in the state of Pahang. Halidan, "Pengalaman Pengurusan Zakat Pahang", 403.

⁸¹¹ Muḥammad Sulaymān al-Ashqar, "Al-Ilzām bi al-Zakāt fī al-Zāhir wa al-Bāṭin min al-Amwāl wa Mashmūlāt Kul Minhumā fī al-ʿAṣr al-Ḥadīth", in *Abḥath Fiqhiyya Fī Qaḍāyā al-Zakāt al-Muʿāṣira*, ed. al-Ashqar et al. (Amman: Dār al-Nafāʾis, 2000), v. 1, 102.

⁸¹² Modern studies on perceived service quality have shown that the customers' perceived service quality of an institution is positively related with their compliance behaviour. Thus, an institution which is perceived to deliver bad service quality is more likely to receive less zakat payment. See Cronin and Taylor, "Measuring Service Quality: Re-examination and Extension", *Journal of Marketing*, 56: 3 (1992), 55-68; Kamil Md Idris, "The Role of Intrinsic Motivational Factors on Compliance Behavior of Zakat on Employment Income", in *Zakat di Malaysia*, ed Abdul Halim Mohd Noor (Malacca: Institut Kajian Zakat Malaysia, 2005), 143-4.

⁸¹³ Sanep Ahmad and Hairunnizam Wahid, "Persepsi Agihan Zakat dan Kesannya Terhadap Pembayaran Zakat Melalui Institusi Formal", *Jurnal Ekonomi Malaysia*, 39 (2005), 65-8.

administering zakat. The study also showed that the respondents had insufficient knowledge about their obligation to pay zakat.⁸¹⁴

A study conducted in the state of Negeri Sembilan found that most Muslims were only aware about the obligation to pay *zakāt al-fiṭr*, which contributes only a small amount of zakat, but not the obligation to pay zakat on wealth. Some of those surveyed also perceived that zakat is similar to voluntary alms (like *ṣadaqa*) and that by paying taxation one fulfilled one's obligation in paying zakat.⁸¹⁵ Another study concluded that one of the reasons that many eligible payers did not pay zakat was their lack of knowledge regarding the calculation of zakat that they have to pay for their zakatable wealth. This is especially true for the type of zakat that needs more complex calculation. Muslims in Malaysia, even though are exposed to studies on zakat as part of their compulsory Islamic religious education in schools, are not taught in detail about all types of zakat and their specific calculations. The coverage and emphasis of their studies on zakat are mostly limited to their obligation to pay zakat and the calculation of basic types of zakat only. Thus, when the payment of zakat involves intricate calculations, like the calculation of zakat for business and income, the eligible payers become confused and choose not to pay.⁸¹⁶

Studies on the payment of zakat also found that not all zakat payers pay their zakat to the zakat institutions but choose instead to pay zakat directly to the recipients. The reasons given for payment to unofficial channels are inconvenience of going to the zakat institution's office, lack of confidence in the institution's capability to distribute

⁸¹⁴ Kamil, "The Role of Intrinsic Motivational Factors on Compliance Behavior of Zakat on Employment Income", 137-70; Noormala, "Mengapa Masih Ramai Tidak Tunai Zakat", *Asnaf*, 3 (2008), 10.

⁸¹⁵ Nor Azmi Musa, "Koleksi dan Pengurusan Kutipan Zakat Negeri Sembilan" in *Zakat Pensyariaan, Perekonomian dan Perundangan*, ed. Abdul Ghafar Ismail and Hailani Muji Tahir (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2006), 379-80.

⁸¹⁶ Halidan, "Pengalaman Pengurusan Zakat Pahang", 404.

zakat, satisfaction received by giving zakat to people that they know, the institution's lack of collection efforts, and also for political factors.⁸¹⁷

The amount of zakat revenue is found to depend on the amount of zakatable wealth in the area of collection.⁸¹⁸ The factors that influence the amount of zakatable wealth include the types of wealth one is obliged to pay zakat for⁸¹⁹ and the economic factors that influence the wealth growth.⁸²⁰ As mentioned in the previous chapter, the collection of zakat in Malaysia prior to the 1990s was insignificant due to the institutions' dependency on the collection of *zakaat al-fiṭr* which is a very small amount obliged on each Muslim. But from the 1990s onwards, the country's zakat revenue recorded massive growth as a result of the initiatives undertaken to collect more zakat on wealth. These include the issuance of *fatwās* obliging zakat on income and the incorporation of some of the MAINs' zakat collection units. During this period, the Malaysian economy also registered strong and rapid growth which further influenced the amount of zakat paid as more wealth was circulated in the economy.⁸²¹

Studies also identified other factors like the zakat institutions' efficiency in collecting zakat and their willingness to enforce the zakat laws which influence the amount of

⁸¹⁷ See Aidit, "Zakat Administration in Malaysia", 105-6; James C. Scott, "Resistance without Protest and without Organization: Peasant Opposition to Islamic Zakat and the Christian Tithe", *Comparative Studies in Society and History*, 29: 3 (1987), 430-7.

⁸¹⁸ The mean monthly household income for Selangor in 2004 was RM5,175 (the highest in the country) and Wilayah Persekutuan Kuala Lumpur was RM5,011 (second highest). The average monthly household income in Malaysia was RM3,249. Prime Minister's Department, *Ninth Malaysian Plan 2006-2010*, 358.

⁸¹⁹ Kahf, *The Principle of Socio-Economic Justice in the Contemporary Fiqh of Zakat*, 37.

⁸²⁰ Mohd Ali and Hairunizam, "Kepentingan dan Sumbangan Zakat Pendapatan: Pengalaman di Wilayah Persekutuan dan Selangor", 123-9.

⁸²¹ Malaysian gross national product recorded on average 8.9% growth in 1990-1995 (based on 1978 constant prices), 4.4% in 1996-2002 (based on 1987 constant prices) and 5.4% in 2003-2008 (based on 2000 constant prices). Kementerian Kewangan Malaysia, *Laporan Ekonomi*, various years at <http://www.treasury.gov.my> (accessed on 2 Jan. 2010).

zakat collection.⁸²² A study on the factors that influence payment of zakat by individual owners of zakat, found that the availability of centres of zakat collection and the various services provided to facilitate the collection are important determinants that make the owners pay their zakat.⁸²³ The zakat institutions of the state of Selangor and Wilayah Persekutuan, for example, managed to record high collection because of their aggressiveness in promoting the obligation to pay zakat. They also provide various facilities that ease the payment of zakat. These included various collection centres, including at the zakat institutions' own branches, banks, taxation firms and post offices, online payment, and the facility to deduct the payment automatically from income.⁸²⁴

Another reason for the low collection of zakat by the zakat institutions was the lack of enforcement on those evading the payment of zakat.⁸²⁵ The rules regarding the obligation to pay zakat and its punishment, as noted in the previous chapter, are clearly outlined in the laws of zakat in every state. The apprehension for offences outlined, however, was very rare as some states, like Wilayah Persekutuan and Selangor, refused to enforce it. The MAINs of these states preferred to adopt an 'educating and awareness' approach which was believed to be more effective than enforcement. They argued that the success of the approach is evidenced by the annual increment of zakat collection.⁸²⁶

The above discussion reveals that the amount of zakat collection for most states in Malaysia varied widely due to many factors. Only the state of Selangor and Wilayah

⁸²² Sanep and Hairunizam, "Kesan Prestasi Agihan oleh Institusi Formal ke Atas Kepatuhan Membayar Zakat"; Aidit, "Zakat Administration in Malaysia", 110-1 .

⁸²³ Muhammad Muda et. al., "Factors Influencing Individual Participation in Zakat Contribution: Exploratory Investigation" (paper presented at Seminar for Islamic Banking and Finance 2006 (iBAF2006), Kuala Lumpur, 29 – 30 Aug. 2006)

⁸²⁴ Mohd Rais Alias, "The Marketing of Zakat: PPZ Federal Territory's Experience", in PPZ MAIWP, *Laporan PPZ 2008*, 115-22; <http://www.e-zakat.com.my/baru/organisasi/kaunter.asp>; PPZ MAIWP, *Laporan Zakat 2008*, 14-5; LZS, *Laporan Pengurusan Zakat Selangor 2007*, 19-23.

⁸²⁵ Scott, "Resistance without Protest and without Organization: Peasant Opposition to Islamic Zakat and the Christian Tithe", 436-7.

⁸²⁶ Siti Mashitoh, "Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan".

Persekutuan collected more than RM200 million zakat in 2008. The collection of zakat was high in both states compared to others not only because of their employment of corporate style of management and extensive computer technology in collecting zakat, but also due to high Malay population and better economic status.

The above discussions show that the current amount of collection in Malaysia is not yet the expected optimal level. The amount of zakat collection is found to be influenced by many factors. Interestingly, two of the main factors were the efficiency of the zakat institutions and the high number of recalcitrant zakat payers, both of which can be improved through proper policy and implementation. Looking at the progressive annual collection growth rate and given proper policy to improve the institutions' efficiency and to decrease if not eradicate the recalcitrant zakat payers, it can be safely assumed that the collection of zakat will increase in the future.

7.4.3 Distribution of Zakat

The right to distribute zakat in Malaysia is accorded to the MAINs in each state. And similar to the collection of zakat, the MAINs distribute zakat either through the Baitulmal Division or an incorporated subsidiary delegated the right of distribution. Comparing the number of states which have incorporated their zakat collection units, there are only three states, namely Selangor, Penang and Sarawak, which have incorporated both their distribution and collection units.⁸²⁷ Even though the MAINs have the right over the collection and consequently the distribution of zakat, direct distribution by the owner of zakatable wealth still exists.

In regards to the distribution of zakat to the recipients, all the states, theoretically at least, make provisions to each group of recipients as specified in the Quran. In practice,

⁸²⁷ Management of collection and distribution of zakat at the MAINs in these three states is delegated to the MAINs' incorporated subsidiaries. See Appendix C.

however, the pattern of distribution among the states is quite different. Some states combine the *fuqara'* and *masakin* as a group of recipients,⁸²⁸ and some states do not provide any allocations for the *riqab*⁸²⁹ and *gharimu*⁸³⁰ groups. The *riqab* group at the states are excluded from disbursement given the non-existence of debt bondage slaves as defined by the classical jurists nowadays. On the other hand the states which opt to disburse to this group like Selangor adopted a more contemporary definition for this group. Allocations under this group at LZS are spent for faith and moral (*akhlāq*) rehabilitation programmes for drug addicts, prostitutes and teenagers with social problems.⁸³¹

Overall, allocations for each group of recipients in each state between 2004 and 2008 were different from one to another.⁸³² In allocating zakat, the managers did not fix a certain proportion for each group. The allocations made for the groups of recipients were found not to be necessarily positively related to the amounts of collection. In other words, an increase in the collection of zakat did not necessarily mean that the allocations for the groups would also increase. The reason for this is that in distributing zakat to each of the recipients, the institutions take into consideration their level of need. The amount of allocation of zakat to a *miskin* in Selangor, for example, is decided based on several criteria such as his income, the number and age of his dependants, availability of home and transport, etc.⁸³³

There is, however, a definite trend observed in the allocation of zakat among the groups of recipients across the years. Allocations to the groups of recipients are

⁸²⁸ The states are Kelantan, Negeri Sembilan and Perak.

⁸²⁹ Only Selangor, Negeri Sembilan and Terengganu provide zakat for this group of recipients.

⁸³⁰ Prior to 2008, there was no distribution made for this group in the state of Perlis and Sabah.

⁸³¹ Ibnor Azli and Norziana Salwa, "Tafsiran Muallaf, Al-Riqab dan Fi Sabilillah", 185. See also discussion in Section 5.4.1.d.

⁸³² The following discussion is based on the information given in Appendix E unless stated otherwise.

⁸³³ http://www.e-zakat.com.my/baru/agihan/had_kifayah.asp

primarily made to three groups; *fuqarā'* and *masākīn*,⁸³⁴ *ʿāmilūn*, and *fi sabīli Allāh*. The total zakat distributed to these three groups represents nearly 90% of total distribution for almost all of the states.⁸³⁵ Allocations for the *fuqarā'* and *masākīn* groups recorded the highest average at 39.5% of the total distribution of zakat. This is followed by the allocations for *fi sabīli li Allāh* at 34.7%.

It is also worth noting that during this period the states on average were 69% more likely to give the *ʿāmilūn* a portion of more than one eighth from the amount distributed. The average percentage of payment made to *ʿāmilūn* from the total amount distributed to the recipients was 17%. Interestingly, states where the collection and distribution units are incorporated have more tendency to allocate higher amounts of zakat to the *ʿāmilūn*. The average cost for the *ʿāmilūn* at the incorporated zakat institutions that manage both collection and distribution was the highest at 19.1% of the total distributed zakat. This is followed by the incorporated collection units at 16.6% and 13.9% for the rest of the zakat managers. These high percentages of allocations channelled to *ʿāmilūn* imply that a higher cost of management was incurred at the incorporated institutions compared to the non-incorporated ones. The high amount allocated to the *ʿāmilūn* also indicate to the high dependency of the MAINs on zakat revenue to pay their officers. They also indicate that less zakat is allocated to other recipients, especially for those in need.⁸³⁶

⁸³⁴ Allocations for *faqīr* and *miskīn* will be discussed as an item considering that some states combined the two groups into one.

⁸³⁵ Similar trend was observed in the states of Perak, Kedah, Negeri Sembilan and Selangor between 1990 and 2000. See Zulkefly et al., "Pendapatan dan Sasaran Perbelanjaan Dana Zakat: Pengalaman di Negeri Perak, Kedah, Selangor dan Negeri Sembilan: Isu dan Cabaran".

⁸³⁶ See Appendix E.

7.4.4 Undistributed Zakat Revenue

Undistributed zakat revenue, also known as excess of zakat collection, is the gap between zakat revenue and the amount of zakat distribution from this revenue. The total allocations of zakat which are distributed to the recipients in each of the states in Malaysia are usually less than the zakat collected during the same year. On average, during the years 2004-2008, 25.5% of zakat revenue in Malaysia was not distributed each year. In 2008 alone, a total of more than RM288 million of zakat was not distributed.⁸³⁷

Comparing the states, during the last five years (2004-2008), MAIWP recorded the highest undistributed zakat of between RM30.4 million to RM54.0 million a year. On average during this period, about 30.9% of zakat revenue collected by the zakat institution was undistributed at the same year of collection. The accumulated excess of zakat during the above period totalled RM227.1 million.⁸³⁸ Another zakat institution which accumulated a high amount of undistributed zakat was LZS. In the last five years examined (2004 - 2008), the accumulated excess of zakat was about RM120.3 million. During this period, on average, LZS did not distribute about 12.9% of its total zakat revenue. The highest recorded excess of zakat was in 2008, where 22.7% (RM55.4 million from RM244.4 million) of the total zakat revenue was not distributed.⁸³⁹

7.5 Conclusion

In Malaysia, the administration of Islamic religious affairs by law is accorded to the MAIN in each state. The council's authority includes the administration, collection and distribution of zakat which is its most prominent source of revenue. As the main

⁸³⁷ See Appendix B. The balance between zakat revenue and distribution is shown as 'Differences between Collection and Distribution'.

⁸³⁸ See Appendix B.

⁸³⁹ See Appendix B.

authority on the administration of zakat, the MAINs are vested with ample authority to dictate the zakat administration policies. These include the power to decide the forms of zakat investment that they want to implement, the operations, the amount involved and the recipients of zakat that can benefit from the investment projects.

As previously shown, an investment of zakat is more likely to take place when the amount of zakat collection is significant. This is because zakat revenue must be considerable enough to finance the investment and also cover the immediate needs (consumption and functional needs) of the recipients. The above findings show that only two states: Selangor and Wilayah Persekutuan, collected significantly high collection of zakat annually. However, given the progressive high rate of collection growth and the reasons of low collection, such as the high number of recalcitrant payers of zakat, and also the evidence of inefficiencies in the zakat collection, it can be safely assumed that the current amount of collection has not yet reached its optimal level.

In the distribution of zakat, several observations are noted. The zakat managers in Malaysia have made provisions to the groups of recipients which are specified in the Quran. Allocations of zakat to each group are not distributed in equal proportions to each group but based on their level of need. Most of the allocations are found to be centred on the groups of *fuqara'* and *masakin*, *amilun*, and *fi sabilillah*. This indicates that the zakat institutions, in distributing zakat, emphasize the need of the poor and adopt a more flexible approach in spending zakat under the *fi sabilillah* group. The findings also show that the cost of administering zakat at these institutions is high.

Finally, it was also found that not all of the zakat revenue is distributed immediately to the recipients. Almost a quarter of the yearly zakat revenue from 2004 to 2008 was not distributed to the recipients in the same year of collection. If this amount of undistributed zakat is the surplus of zakat after fulfilment of all the recipients'

consumptive and functional needs, then each state has a quite significant amount of zakat that is available for investment.

Chapter Eight

Zakat Investment in Malaysia (Part II)

8.0 Introduction

This is the second of two chapters that examine investments of zakat in Malaysia. In the previous chapter, the study looked at the laws that regulate the administration of zakat and the institutions that manage zakat in the country. The previous chapter in general also examined the amount of zakat that is managed by the zakat institutions which provides a rough estimation of possible amount of zakat that is available for investment.

This chapter focuses on the management of zakat investments in the country where the aim is to examine the compliancy of their operations with the underlying principles and purposes of zakat. This chapter firstly examines the management of zakat investment at two of the most dominant zakat institutions in Malaysia, Majlis Agama Islam Wilayah Persekutuan (MAIWP) and Lembaga Zakat Selangor (LZS). They are considered dominant because since early 1990s,⁸⁴⁰ they collected the highest amount of zakat in Malaysia. During the same period, the total zakat revenue at these institutions

⁸⁴⁰ Continuous data on the amount of zakat collection that the study has an access to was from 1991.

represented nearly half of the country's total zakat revenue. In 2008 alone, the zakat revenues at these two institutions represented more than 43.8% of the total collection of zakat in the country.⁸⁴¹ Given the huge amount of zakat revenue at these institutions, they are able to diversify their zakat management methods including undertaking numerous investment activities.

The chapter begins with an introduction to each of this institution. This is followed by a discussion of how the management of zakat investment is organized in each of these institutions. Next, the study examines in details the forms of zakat investment undertaken by these institutions, the mechanisms employed to determine the investment programmes and to select the participating recipients, and the risk management procedures undertaken to minimize risks that are inherent in their zakat investment projects. The focus of discussion here is the purpose and operation of these investment projects and their compliancy with the zakat purposes and principles. Lastly, the study analyzes how these institutions allocate zakat to the recipients specifically for investment activities. The purpose of this is to understand the pattern of zakat distribution among the groups of recipients and see which among the recipients received more allocation of zakat for investment than others.

⁸⁴¹ In 2008, the amount of zakat collected in Wilayah Persekutuan was RM211,364,698 and RM244,409,628 in Selangor. The total collection of zakat in the country that year was RM1,038,259,923. PPZ, *Laporan Zakat 2008*, 66. Population-wise, Muslims in both of these states in 2000, made up roughly about 23% of the total number of Muslims in Malaysia. Prime Minister's Department, *Ninth Malaysian Plan 2006-2010* (Putrajaya, 2006), 238, 361; <http://www.lppkn.gov.my/popnet> (accessed on 3 May 2010).

8.1 Majlis Agama Islam Wilayah Persekutuan (MAIWP)

8.1.1 Introduction

Wilayah Persekutuan (Federal Territories) is one of the fourteen states in Malaysia and includes Kuala Lumpur, Putrajaya and Labuan districts.⁸⁴² The institution which was established in 1974 to oversee the administration of the religious matters in these territories under the provision of the administration of Islamic law for the Federal Territories is the Majlis Agama Islam Wilayah Persekutuan (State Religious Islamic Council for the Federal Territories) or MAIWP.⁸⁴³ Basically, it monitors the development of mosques and religious schools, collection⁸⁴⁴ and distribution of zakat, development of *waqf* and inherited land under MAIWP, administration of Muslim marital affairs, Islamic law enforcement and social development of Muslims.

The responsibility for the decision making for all these affairs at MAIWP is delegated to semi-autonomous, functionally structured committees which are accountable to MAIWP. The committees' members comprise MAIWP's top officers, the Federal Territories' Mufti, academicians and experts in related fields. The committees act as policy and decision makers at the institution. They monitor the policies and ensure that they are implemented accordingly by the executives at the relevant divisions.

⁸⁴² Kuala Lumpur is the national and legislative capital of Malaysia. Putrajaya is the new federal administrative centre and located south of Kuala Lumpur. Labuan lies 8 km off the coast of Borneo and adjacent to the Malaysian state of Sabah. In 1984, Labuan was ceded by Sabah to the federal government and made a federal territory. Kuala Lumpur in 2005 was the most developed region in the country, and its household mean monthly income in 2004 was RM5,011, the second highest in the country after the state of Selangor. See Prime Minister's Department, *Ninth Malaysian Plan 2006-2010*, 356-8.

⁸⁴³ Sec. 4(1) and 31, Administration of Islamic Law Act (Federal Territories) 1993.

⁸⁴⁴ The collection of zakat is managed by a subsidiary of MAIWP, known as Pusat Pungutan Zakat MAIWP.

Application for certain projects and assistance must also meet the approval of these committees before being executed by the executives at the relevant divisions.⁸⁴⁵

8.1.2 Management of Zakat Investment

It should be noted early that at this institution, investment of zakat is meant only for the zakat fund invested in financial instruments that may yield financial returns for the fund. Zakat spent for the recipients for their long-term benefits as defined by modern Muslim scholars is not considered as an investment activity by the institution but as a type of distribution of zakat. According to Muhammad Yamin Ismail, the Manager of the Baitulmal Division,

“Operationally, we [MAIWP] invest zakat funds in unit trusts and mudharabah investment accounts. We distribute zakat as business capital for the poor but we consider this as zakat assistance and not zakat investment.”⁸⁴⁶

Hence, in the structural administration of zakat at this institution there is no specific committee which handles investment of zakat per se is established. There are, however, several committees that are directly involved in deciding the policies and projects for the investment of zakat which provides extended benefits to the recipients. There are the Jawatankuasa Baitulmal (Baitulmal Committee), Jawatankuasa Agihan (Distribution Committee), Jawatankuasa Rumah Perlindungan dan Kebajikan Islam (Islamic Shelter Houses and Welfare Committee), Jawatankuasa Pentadbir Penasihat Institut Kemahiran Baitulmal (Baitulmal Skills Institute Administrative Advisory Committee) and Jawatankuasa Pembangunan dan Pelaburan (Development and Investment Committee). Other committees that provide support to the management of

⁸⁴⁵ See Appendix F (i) and (ii).

⁸⁴⁶ Interview with Muhammad Yamin Ismail, *Manager, Baitulmal Division, MAIWP*, 25 Sept. 2008.

zakat investment are the Jawatankuasa Perundangan Hukum Syarak (Syarak Laws Consultative Committee) and Jawatankuasa Kewangan dan Pengurusan Perakaunan (Finance and Accounting Management Committee). All of these committees work collaboratively in deciding and facilitating zakat investment projects and programmes.⁸⁴⁷

The committees that manage investments of zakat in developmental projects which directly involve the recipients are the Baitulmal Committee, Distribution Committee, Islamic Shelter Houses and Welfare Committee, and Baitulmal Skills Institute Administrative Advisory Committee. Meanwhile, investments of zakat in financial products and in subsidiaries are managed by the Development and Investment Committee.

The Baitulmal Committee was established following the enforcement of the Baitulmal (Federal Territory) (Expenditure and Utilization) Rules in 1980. In general, all expenditures involving the properties and moneys of MAIWP must be approved by this committee. Thus, any utilization of all types of wealth managed by the institution must pass through this committee for consideration and approval. For zakat investment in developmental projects, known as zakat assistance at this institution, the committee has the authority to decide upon any zakat assistance costing above RM100,000. Meanwhile, the Distribution Committee⁸⁴⁸ is responsible in deciding and approving of zakat distribution programmes and has the authority to decide upon any zakat assistance scheme given to individual recipients costing between RM8,000 to RM100,000. It also has the authority to appoint all the *‘āmilūn* (those who are given the

⁸⁴⁷ See Appendix F (i).

⁸⁴⁸ This committee was established on 12 July 1994. On July 2008, this committee was merged with the Baitulmal Committee. MAIWP, *Laporan Tahunan 2008*, 115.

authority to collect zakat on behalf of MAIWP) in the state of Wilayah Persekutuan.⁸⁴⁹ Projects and programmes approved by these two committees will be implemented by the executives at the Bahagian Baitulmal (Baitulmal Division).

The Development and Investment Committee was established on 5 April 1988 and is assigned the authority to propose and decide viable and beneficial development and economic projects for MAIWP.⁸⁵⁰ The policies and decisions are carried out by the Bahagian Pembangunan dan Pelaburan (Development and Investment Division), the executive division of the committee responsible in the planning and managing of MAIWP's real properties and developmental projects, managing its investment and equity holdings in its subsidiaries and other companies.⁸⁵¹

A special committee known as the Islamic Shelter Houses and Welfare Committee was established on 28 July 2006 to decide upon policies and make decisions regarding the three care centres⁸⁵² managed by MAIWP. Meanwhile, the Baitulmal Skills Institute Administrative Advisory Committee is responsible for planning and deciding policies for the Institut Kemahiran Baitulmal (IKB),⁸⁵³ a higher learning institute that provides

⁸⁴⁹ MAIWP, *Laporan Tahunan 2006*, 83-4, 92-3. The decisions about zakat assistance costing RM8,000 and below can be made by certain top officers at Bahagian Baitulmal MAIWP. Interview with Muhammad Yamin Ismail, *Manager, Baitulmal Division, MAIWP*, 25 Sept. 2008.

⁸⁵⁰ All of these investments must first be checked for compliancy with the relevant laws and passed through the Islamic Law Advisory Committee. See MAIWP, *Laporan Tahunan 2006*, 27, 86.

⁸⁵¹ <http://www.maiwp.gov.my> (accessed on 20 Aug. 2008).

⁸⁵² The care centres are Kompleks Anak Yatim Darul Kifayah, a home for the orphans and children from *fuqarā'* and *masākīn* families; Kompleks Kebajikan Masyarakat Islam Dar Assaadah, a shelter for women with unaccepted moral problems or those from troubled families, and for new converts without homes where they are given religious education and skill training; and Darul Hannan, a daily child care centre.

⁸⁵³ Institut Kemahiran Baitulmal (IKB) was established in 1990. Its main objective is to provide vocational training to students from the *fuqarā'* and *masākīn* families which can help them secure a job and earn an income. The courses taught at the institute include electrical engineering, building construction technology, food catering, painting and fashion design. The courses are free and take two years to complete. The selected trainees will be given free

training courses to the recipients. Any proposal from the institute will be decided by this committee, including the academic curriculum of the institute. The committee also provides advice concerning IKB management, finance and training and will chart the physical and human capital development of the institute.⁸⁵⁴ The management for all these social infrastructures and facilities are handled by the Bahagian Pembangunan Insan (Human Development Division).

It is worth noting that all the amounts of zakat available for each of the committee's utilization must pass through the Finance and Accounting Management Committee for deliberation and approval. Similarly, any religious issues related to the implementation and operation of the investment activities will be brought to the attention of the Syarak Laws Consultative Committee for advice and guidance.⁸⁵⁵

All in all, we noted that the management of zakat in MAIWP is very much influenced and shaped by MAIWP's responsibilities not only towards zakat but also other religious matters in the state. The multitude of responsibilities has led to the establishment of committees and divisions with specialized functions instead of being based on the type of religious matter. This is exemplified by the Baitulmal Committee which is responsible in making decisions regarding all expenditures of MAIWP and the Development and Investment Committee which accounts for decisions on any development and investment project at MAIWP regardless of the source of expenditure. As a consequence, the management of zakat is handled by committees that also manage other sources of funds. It is also noted that almost all of the

accommodation, transportation and RM250 monthly stipends. MAIWP, *Buletin MAIWP*, 1 (2008), 10.

⁸⁵⁴ MAIWP, Laporan Tahunan 2008, 107-8.

⁸⁵⁵ <http://www.maiwp.gov.my> (accessed on 20 Aug. 2008).

committees in MAIWP are involved in the management of zakat, a situation which is unavoidable since zakat is the most prominent fund at the institution.⁸⁵⁶

The multiple committees that are responsible in the management of zakat have influence the way zakat investment is managed at MAIWP in three ways. First, there is more than one committee involved in making decisions for the same type of zakat investment. In the case of capital assistance, for example, the approval of the project costing between RM8,000 to RM100,000 is decided by the Distribution Committee, but when the cost exceeds RM100,000, the project must be approved by the Baitulmal Committee, even though the purpose of each project is to assist the poor to generate their own income. Furthermore, all the allocations for each of these committees must first be approved by the Finance and Accounting Management Committee. Multiple command structures in deciding similar projects mean that employees must deal with multiple lines of authority, responsibilities and accountabilities. In other words, more effort and time, if not money, has to be spent to undertake any programme or project.

Secondly, the intricate nature of MAIWP, which manages not only zakat, will entail the problems of recognising the personnel who are really involved in the management of zakat as well as determining the extent of their commitment. The exact number of personnel and the extent that each of them is involved in the administration of zakat is important because zakat can only be used to pay the personnel who manage zakat, and the amount of payment they receive will depend on the extent of their commitment. The actual remuneration is important to determine the exact cost of zakat investment. Any expenditure that is unrelated to zakat administration must be reimbursed from other than zakat funds.

Thirdly, zakat investment in financial products and real assets is handled by the Development and Investment Committee and not by the committees involved in the

⁸⁵⁶ In 2008, for example, zakat revenue was RM210,881,353 or 90.1% of MAIWP's total revenue (RM233,960,893). See MAIWP, *Laporan Tahunan 2008*, 71-3.

distribution of zakat (The Baitulmal and Distribution Committees). The segregation shows that this type of zakat investment is considered a distinct transaction from the conventional zakat distribution process. This may be explained by the nature of this type of investment where it is conducted prior to distribution and without any targeted individual or group of recipients but to increase the zakat fund in general. The segregation also implicitly implies that the zakat that is spent by other than the Development and Investment Committee, even for long term purposes, is not considered to be an investment activity by this institution.

It is also noted that in managing zakat, MAIWP as an administrator of multiple religious funds does not emphasize the segregation of zakat from other funds. This is exemplified by the accounts provided in their annual reports and released to the public which are mostly consolidations of transactions involving zakat and MAIWP's other funding sources. Even though the exact amount involving zakat may be known to the institution, it is also pertinent that the public is made aware of it. Doubts and concerns among the public regarding the exact amount of transactions involving zakat will only create distrust and might lead to the zakatable wealth owners' reluctance and disinclination to pay zakat to this institution.

8.1.3 Forms of Zakat Investment

There are basically two forms of zakat investment undertaken by MAIWP. One is the investments which are funded by the excess of zakat revenue after distribution. The investments are funded with zakat that is not distributed to the recipients yet (which we refer as pre-distribution investments). In 2008 alone, there was RM43.9 million of zakat (from RM211.4 million of zakat collected) which was not disbursed by this institution. From 2004 to 2008, the undistributed amount was about RM227.1 million (from a total of RM773.5 million). As the numbers indicated, on average throughout

this period, about 30.9 percent of the zakat revenue was not disbursed directly to the recipients in the year that they were collected.⁸⁵⁷ MAIWP as the zakat manager will invest this undistributed amount of zakat under its name and any financial return from these investments will be channelled back to the zakat fund.

Second are the investments which are funded by zakat that are already allocated to the groups of recipients of zakat (which we refer as post-distribution investments). In this form of investment, zakat will be allocated to the selected recipients. The recipients can be individual recipients or institutions that provide the recipients with supports and services. This type of zakat investment is either operated by the recipients or managed by the supporting institutions.

Investments which are funded by the excess of zakat revenue in general are conducted to increase MAIWP's revenue, to enhance the asset ownership of Muslims specifically in the Federal Territories, and to expand the zakat fund for the benefit of the recipients.⁸⁵⁸ In this type of investment, zakat is invested in both financial and real assets. Investments in financial assets range from liquid financial products, like banking investment certificates and unit trust funds, to less liquid ones, like structured investment products and shares owned in Skim Ar-Rahnu YaPEIM⁸⁵⁹, private companies, and MAIWP's own subsidiaries. Investments in banking investment certificates are cash deposited at local Islamic banking institutions for at least a one month period. These certificates are similar to fixed deposits except that it is not an

⁸⁵⁷ See Appendix B.

⁸⁵⁸ MAIWP, *Laporan Tahunan 2008*, 36-37. See also Appendix F (iii) for the annual revenues generated by MAIWP from these investment activities. The investment is allowed under the rights given to MAIWP provided under Sec. 7(2), Administration of Islamic Law Act (Federal Territories) 1993.

⁸⁵⁹ YaPEIM or Yayasan Pembangunan Ekonomi Islam Malaysia (Malaysian Islamic Economic Development Foundation) is a federal trustee established to improve the socioeconomic development of the Muslim society. The Skim Ar-Rahnu YaPEIM is a micro credit financing obtained by collateralizing gold or jewellery made from gold. See <http://www.yapeim.net.my>. MAIWP has invested RM10 million in the scheme since 1996.

account which accrued the depositor a promised fixed income. MAIWP has an investment worth of RM186 million in 12 financial institutions in 2008 in this type of product.⁸⁶⁰

Investments in unit trusts are undertaken in several licensed unit trusts, such as Amanah Raya Berhad's Al-Wadiah Yad Dhamanah Trust Accounts Scheme, Hwang-DBS Izdihar Fund and Darul Iman Unit Trusts. The investment value of these unit trusts in 2008 was RM26.93 million. Investment in private shares include in Bank Islam Malaysia Berhad and TH Plantation Berhad worth RM3.6 million in the same year.⁸⁶¹ The subsidiaries which MAIWP has invested in, as at 2008, were Hospital Pusrawi Sendirian Berhad, Yayasan Taqwa Wilayah Persekutuan Berhad, Institut Profesional Baitulmal Sendirian Berhad, Anggun Mulia Sendirian Berhad and Harta Suci Sendirian Berhad.⁸⁶²

From the undistributed zakat, MAIWP also invests in real properties including land, houses, apartments and business premises.⁸⁶³ In 2008, MAIWP spent RM23.56 million of zakat on the management of MAIWP real estate properties, including the acquisition of land in Kuala Lumpur, residential homes in Labuan and a student apartment block in Cairo.⁸⁶⁴

It should be noted that even though it was reported in MAIWP's annual reports that zakat has been utilized in financing these investment activities, the exact amount of

⁸⁶⁰ See Appendix F(vi).

⁸⁶¹ See Appendix F(vi).

⁸⁶² MAIWP, *Laporan Tahunan 2008*, 37-47. For these subsidiaries, MAIWP's involvement is mostly in providing initial outlays for their establishment. Most of them now fund their own operational costs and pay back MAIWP in dividends, fees and royalties. Interview with Abd Karim Mohamed, *Deputy Manager, Development and Investment Division, MAIWP*, 29 Jan. 2009. See Appendix F (vi) for investments of MAIWP in the financial markets and its subsidiaries, their value of investment and the profits generated from this investment in 2008.

⁸⁶³ MAIWP, *Laporan Tahunan*, various years.

⁸⁶⁴ Altogether for the year 2008, MAIWP spent RM23.66 million for the management of its real estate properties. From this amount, all was from zakat except RM105,000 which was contributed by *waqf* and other resources than zakat. MAIWP, *Laporan Tahunan 2008*, 35-6.

zakat invested is not clearly disclosed to the public. The financial statements provided in MAIWP's annual reports are quite ambiguous and do not clearly report the products or projects where zakat has been invested, the exact amount involved, and the profits earned or the losses borne from all these investment activities. The ambiguity of the financial statements regarding the expenditures of zakat occurs because the issued financial reports are consolidated reports of all revenues at MAIWP. As mentioned above, MAIWP not only manages zakat but also other religious funds like *waqf*, *luqata*, *farāid* and so forth. However, given that zakat collection contributes on average 87.4% of the MAIWP's total revenue from 2005-2008, and that on average 47% of the zakat collected is undistributed during the same period, it can be safely assumed that a significant amount of zakat must have been employed in some, if not in all of these types of investment. (See Table 8.1)

Table 8.1 Majlis Agama Islam Wilayah Persekutuan: Zakat Collection and Distribution, Total Revenues and Total Expenditures from 2005-2008

	2005	2006	2007	2008
Total Revenues	153,223,577	171,220,187	197,874,898	234,075,283
Zakat Collection	128,938,304	148,768,851	174,646,665	210,881,353
	<i>84.2</i>	<i>86.9</i>	<i>88.3</i>	<i>90.1</i>
Total Expenditures	79,221,890	108,410,944	146,353,471	146,353,471
Zakat Distribution	60,323,912	73,493,839	105,557,606	117,184,208
	<i>76.1</i>	<i>67.8</i>	<i>72.1</i>	<i>68.0</i>
Percentage of Zakat Distribution from Zakat Collection	46.8	49.4	60.4	55.6

Source: MAIWP, *Laporan Tahunan*, various years.⁸⁶⁵

Note: Numbers in *italics* are percentages of zakat from total revenue and expenditures.

⁸⁶⁵ It should be noted that the figures presented here are from MAIWP's financial statements. The data for zakat collection and distribution at MAIWP are also available in the statistics presented at the end of the annual report and also in PPZ's annual reports. The data in these two reports however were found inconsistent with each other.

There are significant returns recorded from the above investment activities. Investment in Mudharabah General Investment Accounts at various local banking institutions for example, in 2005, on average obtained an annual rate of return between 2.49 to 3.3 percent.⁸⁶⁶ At the end of 2008, MAIWP has invested a total of RM234.8 million in these investment certificates and received revenues totalled at RM6.4 million. Other forms of returns are rents from real properties, royalties, share dividends and liquidation from subsidiaries, and dividends from unit trusts and equity investments.⁸⁶⁷ According to MAIWP's annual reports, all of these returns are channelled back into MAIWP's account as revenues.⁸⁶⁸

For the above form of zakat investment, since the utilized zakat is the undistributed zakat revenue, the ownership of zakat investment has not been transferred to any of the recipients. The ownership of the invested assets is basically withheld by MAIWP.

Besides the type of investment above, zakat also is invested to achieve long-term developmental objectives for the recipients especially to enable the *faqīr* and *miskīn* earn their own income in the future. The allocations for these types of investment are made via each group of recipients through what is known as zakat assistance and are given to the recipients in cash, kind and services.⁸⁶⁹ These zakat assistances are handled by the Baitulmal Division which is responsible in the distribution of zakat to the recipients. The amount of zakat spent for the recipients' long-term benefits are not recorded at any of the institution's publicly available information.

The zakat assistance is given both to individual recipients and institutions that cater to the recipients' need. For the individual recipients, the zakat assistance provided are

⁸⁶⁶ MAIWP, *Laporan Tahunan* 2005, 34.

⁸⁶⁷ See Appendix F (iii).

⁸⁶⁸ These returns and zakat are reported as separate revenue accounts in MAIWP's financial statements. See MAIWP, *Laporan Tahunan*, various years.

⁸⁶⁹ The allowance to allocate zakat in all of these forms of payment and in a variety of undertakings in MAIWP is stated in Rule (5), Baitul Mal (Federal Territory) (Expenditure and Utilisation) Rules, 1980.

scholarships for tertiary education,⁸⁷⁰ capital assistance provided to assist the *fuqarā'* and *masākīn* who have insufficient earnings to establish a business (start up capital) or to expand an existing enterprise (operational capital),⁸⁷¹ fees for courses that allow them to acquire specific skills⁸⁷², capital to buy tools, machines, and vehicles⁸⁷³ which enable them to conduct businesses and engage in works. All the zakat assistance in general is given directly to the recipients except the fees to pay for the courses attended by the recipients which are paid directly to the organizing institutions. Zakat assistance is also given to fund projects for the dissemination of Islamic teachings and other social supports under the allocation for *fī sabīl li Allāh* group.⁸⁷⁴

⁸⁷⁰ Scholarships for tertiary education are provided for students from the *fuqarā'* and *masākīn* families and also from families that do not have enough fund for education which are provided under the *fī sabīl li Allāh* group. MAIWP provides RM5,000 per year for undergraduates studying in universities abroad, RM4,000 per year for students studying in local universities. MAIWP, *Laporan Tahunan 2008*, 25.

⁸⁷¹ An example of this is an allocation of RM5,000 given to selected *faqīr* or *miskīn* which enable him to buy the inventories needed to operate a food stall. In 2008, MAIWP allocated RM3.28 million as capital assistance to 971 recipients. The types of businesses assisted are retailing, traditional food industries, restaurants, workshops and handicrafts. MAIWP, *Laporan Tahunan 2008*, 24.

⁸⁷² Selected recipients, for example, are sponsored to attend entrepreneurship classes which provide them with basic knowledge and skills to become entrepreneurs. In 2008, MAIWP gave training and guidance to 90 selected recipients who receive monthly financial assistance and showed interest and potential to operate a business. The training was in tailoring, cooking and bread-making. MAIWP also organizes entrepreneurship courses for those selected to receive business assistance. The subjects taught include marketing, communication, basic accounting and financial management. Besides these entrepreneurship courses, MAIWP also provides specialized courses like electrical engineering, catering, building construction technology, nursing, and etc. through its three education institutions. These institutions are Institut Kemahiran Baitulmal, Institut Profesional Baitulmal and Institut Kejururawatan Pusrawi. In 2008, MAIWP channelled RM5.2 million of zakat to pay for the fees of students from the *fuqarā'* and *masākīn* families studying at these institutions. MAIWP, *Laporan Tahunan 2008*, 22- 26; 137-9. See also Appendix F (iv).

⁸⁷³ An example of this is monthly allocations given to selected recipients to pay for the monthly instalments for cars which are driven by the recipients as cabs. Interview with Muhammad Yamin Ismail.

⁸⁷⁴ <http://www.maiwp.gov.my/index.php/perkhidmatan/bantuan-zakat-maiwp.html> (accessed on 21 Jan. 2010).

8.1.4 Determination of Projects

As noted above, investment at MAIWP is undertaken to achieve several objectives: to increase the revenue of zakat fund as well as MAIWP's assets, to expand the asset ownership of Muslims and to assist the recipients especially the *fuqara'* and *masakin* to earn their own income.⁸⁷⁵

Several committees and divisions are responsible in determining the zakat investment projects that can achieve these purposes. The Development and Investment Division (the executive branch of the Development and Investment Committee) in determining the banking investment deposits for example, will first seek from or offered various deposit investment products by local financial institutions. Based on the offers, the committee will then decide the institutions, the amount, the products and the period of investment. Once the decision is made, it will be brought up to the council's top management for approval before the committee proceeds with the investment.⁸⁷⁶ For development projects and real asset acquisitions, the division will first identify feasible projects, and the allocations needed for the cost of its establishment, operation and maintenance. The planning will be forwarded to the Development and Investment Committee for deliberation and approval. Once the projects are approved, they will be brought further to the higher board of MAIWP for the final decision. Upon approval by the board, the Development and Investment Division will plan the budgeting for the projects and initiate their development.⁸⁷⁷

The development projects for the *fuqara'* and *masakin* are vetted by two committees depending on the amount of costing involved. The Baitulmal Committee scrutinizes the

⁸⁷⁵ MAIWP, *Buletin MAIWP*, 1 (2008), 10; MAIWP, *Laporan Tahunan 2008*, 23.

⁸⁷⁶ Ahmad, "Pelaburan Zakat di Malaysia: Kajian di Batulmal Majlis Agama Islam Wilayah Persekutuan", 81-5.

⁸⁷⁷ Interview with Abd Karim Mohamed.

development projects costing RM100,000 and above while the Distribution Committee examines any zakat assistance costing lower than this amount. Given that the evaluated projects involve the recipients, in deciding the type of assistance scheme and the amount of zakat invested, the Distribution Committee will look at the recipient's eligibility, ability and interest in managing the projects.⁸⁷⁸

It is also worthy to note that each of the above committee comprises representatives from MAIWP and other relevant public agencies. Members of the Distribution Committee for example include representatives from MAIWP, Jabatan Kebajikan Masyarakat Wilayah Persekutuan, Jabatan Kebajikan Perubatan Hospital Universiti Kebangsaan Malaysia, Jabatan Kerja Sosial Perubatan Hospital Kuala Lumpur, Jabatan Pelajaran Wilayah Persekutuan and Bahagian Pembangunan Kementerian Wilayah Persekutuan.⁸⁷⁹ Each of the above projects and programmes also must be approved by the Syarak Laws Consultative Committee before being implemented.⁸⁸⁰ The committee members include the Mufti of Wilayah Persekutuan, Islamic law experts and academicians.⁸⁸¹ The presence of mufti, the religious scholars and also experts in the relevant field that will supervise the legality of the activities and their operations suggest that MAIWP is particular about the investment projects' compliancy with *Shari'ah*.

⁸⁷⁸ MAIWP, Laporan Tahunan 2008, 115.

⁸⁷⁹ MAIWP, Laporan Tahunan 2008, 115-6.

⁸⁸⁰ MAIWP, *Laporan Tahunan 2006*, 27. The Syarak Laws Consultative Committee' functions include discussing and issuing new *fatwās* for the Federal Territories..

⁸⁸¹ Members of the committee include Sheikh Ghazali Abdul Rahman (Chief Judge of the Syariah Court and Chairman of the Shariah Advisory Council (SAC) of Securities), Md Salleh Ahmad (Committee member of the Majlis Agama Islam Perak and the Majlis Agama Islam Pulau Pinang and Senior Academic Fellow of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia), Mahamad Arifin (Lecturer at the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia and Member of Shariah Committee of CIMB Aviva Takaful Berhad), and Mohd Nasir Omar (Lecturer, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia).

Besides the above mechanisms, some other measures also are taken to ensure that the programmes introduced can fulfil the purposes of investment. For those selected for the capital assistance schemes, free entrepreneurship courses are provided jointly with other organisations involved in providing assistance for new entrepreneurs in the country like the Majlis Amanah Rakyat (MARA)⁸⁸². The courses are aimed to equip the selected recipients with business knowledge and to help them become committed and disciplined entrepreneurs.⁸⁸³ In ensuring that the poor students at IKB have the necessary skills to enter a job market, the institute only offers courses that received recognition from the industry. All IKB's courses are recognized by the Department of Skills Development of the Ministry of Human Resource and the graduates are awarded not only the institute's certificates but also Malaysian Certificates of Competence. Furthermore, the IKB's trainees are required to undergo practical training and internship outside of IKB in order to expose them to the real working world prior to their graduation.⁸⁸⁴

All in all, the above measures and considerable vetting and deliberation by the relevant committees suggest that MAIWP in determining the investment projects must have taken into consideration the requirements of zakat investment as outlined by the principles of zakat.

8.1.5 Selection of Recipients

For the investment projects that involve the recipients of zakat, MAIWP employs specific measures to identify and select suitable candidates. The selection of recipients for the development projects depends on several requirements which take into account not only the *Shari'ah* requirements regarding the selection of appropriate recipients but

⁸⁸² Majlis Amanah Rakyat is a government body established to encourage, train and assist the Bumiputera (Malays and other original races in Malaysia) in trade and entrepreneurship.

⁸⁸³ MAIWP, *Laporan Tahunan* 2007, 23.

⁸⁸⁴ MAIWP, *Laporan Tahunan* 2008, 138-9; MAIWP, *Buletin MAIWP*, 1 (2008), 10.

also the suitability of the projects to each recipients as well as his ability in managing the project. The Islamic law requirements include the recipient's faith, his residence status and his state of earnings which must be below the *ḥadd al-kifāya*.⁸⁸⁵ In addition to these prerequisites, each programme has its own specific requirements which are outlined to ensure that the applicants have the ability and interest to make them successful.

Faqīr and *miskīn* who are interested in applying for the business capital assistance for example, firstly must submit an application that is endorsed by the chief *ʿāmil* of the recipient's locality. The assistance also will only be given to those who have already obtained business operating licenses and have experiences in managing businesses or are already engaged in certain works like operating a workshop or managing a farm. Similarly for the capital allocated to pay the hire and purchase deposits for a taxi or a bus, an applicant must own a driving license, has the permission to operate a public vehicle, and has at least a year experience in doing so.⁸⁸⁶ The relevant division, in this case the Baitulmal Division, will verify all of the applications and will conduct investigation to access the applicants' validity and prospects, including paying a visit to the applicants' home and business site. The application will be assessed based on certain credence that considers the applicant's *ḥadd al-kifāya*, physical disability, attitudes, venue and experiences of doing businesses and business licence availability.⁸⁸⁷

⁸⁸⁵ The general prerequisites for selected recipients are that they must be Malaysian and have resided in the Federal Territories not less than a year. The requirement that their earnings are below the *ḥadd al-kifāya*, also applies to most of the programmes. See Appendix F (v) for details.

⁸⁸⁶ The requirements and the application forms for zakat assistance can be accessed at <http://www.maiwp.gov.my>. See also Appendix F (v).

⁸⁸⁷ Radhiana, "Perlaksanaan Skim Bantuan Perniagaan di Baitulmal MAIWP dan Kesannya: Kajian di Wilayah Persekutuan", 41.

Similarly for the courses offered at the IKB, applicants will be selected based on their faith, their families' lack of *ḥadd al-kifāyā* (only applicants where the head of family earns less than RM500 a month will be accepted), age, academic achievement and physical fitness.⁸⁸⁸

The measures undertaken by MAIWP in assessing eligible recipients for the investment projects show its seriousness in ensuring that only eligible recipients are selected to partake in these projects and they can really benefit from the investments. The measures are necessary considering that these projects might involve higher amount of zakat allocation, take longer to succeed and most of all might probably forsake the consumptive needs of some other eligible recipients.

8.1.6 Management of Risk

One of the most important issues of zakat investment is the probability of loss associated with any investment venture and the availability of the invested zakat when demand for its distribution suddenly arises. The majority of modern jurists, even though they allow investment of zakat, require that necessary measures are taken to ensure that the losses associated with the investment activities can be avoided or at least minimized. The measure is pertinent given that zakat is a right of the recipients. Any losses incurred in any investment undertaken prior to distribution to the recipients must be replaced by the zakat institution. This is to ensure that the exact amount of zakat paid by the owner of zakatable wealth is transferred to the recipients. They also insist that the invested zakat is easily available for distribution to the recipients when the need for immediate consumption arises.

Under the current arrangement, risk for any of the pre-distribution zakat investment is monitored by the Development and Investment Division (the executive branch of the

⁸⁸⁸ MAIWP, *Buletin MAIWP*, 1 (2008), 10.

Development and Investment Committee).⁸⁸⁹ It is clearly stated in the institution's annual reports that the management strives to control its investment risks by emphasizing its internal control system, performing continuous analysis regarding the risks prevalent in the institution and minimizing their exposure to risk by investing in liquid assets as well as diversifying their investment.⁸⁹⁰

Looking at the investments made by this institution, for the pre-distribution zakat investments especially those involving banking investment certificates, the problem of loss may not materialize since it is guaranteed principally by the government. The risk of loss for other types of investment like the unit trusts, shares in its subsidiaries and other companies, and etc. however is always probable. There were several incidents where MAIWP made losses in its investments like the lost of RM2 million in a public listed company, Petronas Dagangan Berhad in February 1994, and losses of RM147,707 and RM2,092,074 in 1997 and 1998 respectively in its investment shares.⁸⁹¹ Not much was known on how MAIWP handled these losses. But in 1992, when some of its investment of zakat in unit trust funds incurred huge losses due to an economic downturn in the country, MAIWP took a counter measure if not a complete replacement for the losses made after consulting the Mufti at the time for the appropriate action to deal with the losses. The Mufti then advised MAIWP not to withdraw the invested zakat from the devalued unit trusts until its value at least return to its par. MAIWP also was advised to channel the devalued investment to other investment vehicles which had better prospects in increasing its value.⁸⁹²

⁸⁸⁹ Interview with Rafidah Ab. Rahman, Assistant Manager, Investment Unit, Development and Investment Division, MAIWP, 19 June 2008.

⁸⁹⁰ MAIWP, *Laporan Tahunan 2007*, 54.

⁸⁹¹ Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia", 331-2; MAIWP, *Laporan Tahunan 1998*, 73.

⁸⁹² Interview with Rafidah Ab. Rahman.

We also note that most of MAIWP's investments like the investment certificates, unit trusts and structured financial products are near liquid investments.⁸⁹³ This kind of investment ensures easy convertibility of the assets if there is demand for cash. The portfolio of investments is also well diversified as MAIWP invest in many types of investment with many maturity dates at a period of time. The diversification is enhanced further by the multiple products in each type of financial products for example like in shares and unit trusts⁸⁹⁴ which itself is a precise measure to stabilize possible losses incurred in any of its investments.

For the post-distribution investments undertaken through the development programmes, MAIWP employs different kind of measures to reduce the potential risk of failure. Applicants for the business capital assistance for example must meet certain criteria to be accepted. They also must attend all the required entrepreneurship courses to ensure that they are competent enough to operate the businesses successfully.⁸⁹⁵

In a nutshell, MAIWP has shown that it has taken appropriate measures where possible to contain the risks associated with investment of zakat. However, the measures are mostly to reduce if not to prevent any expected losses only. For the losses incurred by its investment projects which utilized pre-distribution zakat, as far as the study knows, there is yet any mechanism or policy that is currently employed by MAIWP to ensure that the losses are properly replaced.

⁸⁹³ See Appendix F (vi).

⁸⁹⁴ Among the unit trust fund invested are Hwang-DBS Dana Izdiyar, TA Islamic Fund, Prudana Al-Ilham and Amanah Saham Darul Iman. MAIWP also has invested in public shares like Bank Islam Malaysia Berhad and Petronas Dagang Berhad. See MAIWP, *Laporan Tahunan 2005*, 34.

⁸⁹⁵ Radhiana, "Perlaksanaan Skim Bantuan Perniagaan di Baitulmal MAIWP dan Kesannya: Kajian di Wilayah Persekutuan", 39.

8.1.7 Allocations of Zakat for Investment

One of the legal responsibilities of MAIWP in managing zakat is that it must prepare an annual budget of the expected zakat revenue and expenditures.⁸⁹⁶ Future allocations for all types of investment are included in this annual budget, whether for pre-distribution investments or post-distribution investments. The Baitulmal Division will be responsible in planning the budget for the allocations for post-distribution investment. This includes allocation for the recipients' capital assistance, their training and courses, the establishment and management of the supporting facilities managed by MAIWP and allocations given to several welfare agencies which provide services and supports to Muslims society in general. Meanwhile, the Development and Investment Division will plan the allocations for pre-distribution investments including the cost of acquiring and developing assets under MAIWP, and the amount of investment in financial products.⁸⁹⁷

It is important to note that even though the allocations for the later types of investment which are under the Development and Investment Division, are planned before the actualization of excess of collection, the actual expenditure for the investments will only be made from the available excess amount of zakat collection. All of the allocations for these types of investments will be decided from time to time by the Accounting and Financing Committee which will meet to decide these several times in a year.⁸⁹⁸

In distributing zakat to the groups of recipients, MAIWP segments the distribution into two categories, direct and indirect distributions. Direct distribution is where zakat is given to the recipients in the forms that they can benefit from it instantly. Examples are like monthly food and financial assistances, rent assistance, home construction or repair, capital assistance for businesses, assistance for Islamic religious dissemination

⁸⁹⁶ Sec. 69, Administration of Islamic Law Act (Federal Territories) 1993.

⁸⁹⁷ Interview with Abd Karim Mohamed.

⁸⁹⁸ MAIWP, Laporan Tahunan 2007, 100-2.

programmes, etc. Meanwhile, in indirect distribution, zakat is spent in development projects like training centres, hospitals, and shelters, where the recipients will benefit the zakat not from the projects but through the services provided by the development.⁸⁹⁹

In 2008, MAIWP collected RM211.4 million of zakat and distributed RM167.5 million to the recipients. From this zakat revenue, RM43.9 million was not distributed.⁹⁰⁰ The highest amount, that is RM85 million (50.8% of total distribution) of zakat was allocated to the *fi sabīl li Allāh* group. This was followed by the allocations made for the groups of *‘āmilūn* at RM31.6 million (18.8%), *masākīn* at RM (13.5%) and *fuqarā’* at RM (12.2%).⁹⁰¹

From the amount allocated to the *fuqarā’* and *masākīn*, the institution in 2008 allocated RM3.28 million as business capital assistances to 971 recipients and sponsored 132 participants to attend entrepreneurship courses.⁹⁰² Allocations made for investments under the *fi sabīl li Allāh* group included RM3.5 million to fund programmes undertaken by the religious institution in Wilayah Persekutuan, RM1.67 million as scholarships for students attending tertiary education⁹⁰³ and RM790,000 in April 2008 given to several organizations that provide social supports to Muslims.⁹⁰⁴

⁸⁹⁹ Zainal Abidin Jaafar, “Cara Pengagihan Dana Zakat: Pengalaman Wilayah Persekutuan”, in *Kaedah Pengagihan Zakat: Satu Perspektif Islam*, ed. Nik Mustapha Nik Hassan (Kuala Lumpur: IKIM, 2001), 63-100.

⁹⁰⁰ See Appendix B.

⁹⁰¹ See Appendix E.

⁹⁰² MAIWP, Laporan Tahunan 2008, 24-6.

⁹⁰³ This figure was the amount of zakat allocated by MAIWP as scholarships for students attending undergraduate and postgraduate studies for the 2007/2008 session in local and overseas universities. See MAIWP, *Buletin MAIWP*, 2 (2008), 9. In 2009, MAIWP spent RM3.7 million for scholarships for students studying medicine and Islamic studies in Egypt. “Baitulmal MAIWP Sedia RM3.7 Juta Biasiswa”, *Berita Baitulmal*, 27 Aug. 2009, <http://zakat.com.my/content/baitulmal-maiwp-sedia-rm37-juta-biasiswa> (accessed 23 June 2010).

⁹⁰⁴ The organizations included Persatuan Cina Muslim Malaysia, Persatuan Kebajikan Islam Malaysia, Islamic Outreach and Angkatan Belia Islam Malaysia. See MAIWP, *Buletin MAIWP*, 3 (2008), 8; 27.

In 2007, the institution collected RM173.8 million of zakat and distributed RM121.2 million from this amount to the recipients.⁹⁰⁵ Similar to allocations in 2008, the portion allocated to the *fī sabīl li Allāh* was the highest at 49% of total distribution. This was followed by allocations for the *masākīn* at 17.1%, the *fuqarā* at 16% and the *‘āmilūn* at 13.4%. From the allocations made to the *fuqarā* and *masākīn*, the institution allocated RM0.56 million as business capital assistances to 368 participants. Each of them received an allocation between RM4,000 to RM10,000. Allocations also were made to 114 trainees at IKB to cover their RM350 monthly allowances, fees, accommodation, uniforms and transportation from their accommodation to the institute.⁹⁰⁶

The allocations made to the recipients above shows that the institution distributed nearly 90% of its collection of zakat to four of the groups of recipients; the *fuqarā*, *masākīn*, *‘āmilūn* and *fī sabīl li Allāh*. Among these four groups, the *fī sabīl li Allāh* group received the highest allocations, about half of the total distribution. This indicates that the institution emphasizes the allocation of zakat to the general benefits of Muslims rather than focusing on those in poverty. While the high amount of undistributed zakat suggests that the institution has a large amount of financing that it can utilize for pre-distribution zakat investments.

It is also noted that at this institution, external sources of financing was employed to finance big development projects for the recipients which require huge amount of financing. An example is an *ijāra* financing⁹⁰⁷ from Lembaga Urusan dan Tabung Haji (LUTH)⁹⁰⁸ to develop a hospital and a hotel complex known as Hospital Pusrawi and

⁹⁰⁵ See Appendix B.

⁹⁰⁶ MAIWP, Laporan Tahunan 2007, 22-6.

⁹⁰⁷ An *ijāra* financing is a financial lease between a lessor and a lessee, whereby the lessee will buy an asset on behalf of the lessor. The lessor as a financier will pay its price to the supplier. The asset will then be leased to the lessee who will pay the leases throughout the contracted period, enabling it to utilize the assets. See Usmani, *An Introduction to Islamic Finance*, 157-65.

⁹⁰⁸ Lembaga Urusan dan Tabung Haji or LUTH is an institution established by the Malaysian government in 1962 to manage the deposits of Muslims who want to perform their

Putra Plaza worth RM70 million.⁹⁰⁹ The period of this financing is 15 years where MAIWP will pay the annual leases estimated at RM11 million per year from the zakat fund.⁹¹⁰

8.2 Lembaga Zakat Selangor (Selangor Zakat Board)

8.2.1 Introduction

Majlis Agama Islam Selangor (MAIS) is the MAIN for Selangor which is the most prosperous and populous state in Malaysia. It was established in 1952 and currently serves about 2.5 million Muslims in Selangor.⁹¹¹ On 15 February 1994, MAIS established a private limited company assigned to collect zakat in the state of Selangor named MAIS ZAKAT Sendirian Berhad or known as Pusat Pungutan Zakat Selangor (Selangor Zakat Collection Centre). The name was changed to Pusat Zakat Selangor MAIS (MAIS Zakat Collection Centre) or simply PZS later in 1996. In 1998, the zakat distribution under the Bahagian Baitulmal (Baitulmal Division) at MAIS was consolidated into PZS, thus enabling it to both collect and distribute zakat in Selangor.⁹¹²

In 2006, PZS was upgraded to a board status and became known as Lembaga Zakat Selangor (Selangor Zakat Board) or LZS. The upgrade was exercised by restructuring its organization, to strengthen the institution's ability and effectiveness in collecting and distributing zakat. The new restructured organization emphasizes better quality

pilgrimage. The facility enables Muslims through their deposits to participate in investment activities in plantation, manufacturing, real estates and such. It also manages the pilgrims' preparation and transport to the Muslim holy land and other pilgrimage related matters there. See <http://www.tabunghaji.gov.my>

⁹⁰⁹ MAIWP, Laporan Tahunan 2007, 32.

⁹¹⁰ Interview with Abd Karim Mohamed.

⁹¹¹ In 2004, the mean monthly household income in Selangor was RM5,175 which was the highest in Malaysia. The population of Selangor in 2005 was 4.87 million or 18.2% of the total Malaysian population. See Prime Minister's Department, *Ninth Malaysian Plan 2006-2010*, 356-61.

⁹¹² <http://www.e-zakat.com.my/baru/organisasi/organisasi.asp> (accessed on 4 Dec. 2009)

customer services, maximizes potential collection of zakat, and focuses on long-term development programmes with the aim of eradicating poverty and improving Muslims socio-economy.⁹¹³ This re-branding exercise also prepares the institution towards a full future enforcement of the state's zakat laws.⁹¹⁴

Compared to PZS, which was registered under the Companies Act 1965, LZS was registered under the Trustees (Incorporation) Act 1952 (Act 258) which made it a body corporate trustee.⁹¹⁵ As an incorporated trustee, it enjoys the benefits of a corporation⁹¹⁶ and at the same time avoids the trappings of a private limited company associated with garnering wealth through its investment activities. This new entity is not only more representative in terms of its true nature of works and functions⁹¹⁷ but also necessary for both the institution's goals and specific means of attaining them.

The management of zakat at LZS are divided into several departments which represent the three main functions of the board which are collection and distribution and the related administrative affairs.

⁹¹³ Mohd Sa'ad and Aktar Sahari, "Naik Taraf LZS (MAIS): Pengiktirafan Tidak Ternilai", *Asnaf*, 1 (2006), 8-9.

⁹¹⁴ Noormala Mohd Sa'ad, "Lembaga Zakat Selangor: Lembaran Baru PZS", *Asnaf*, 1 (2006), 6-7.

⁹¹⁵ A trust is an arrangement under which property is given to one or more persons (called the trustee or trustees) to use or apply the property and the income from it, for other persons (the beneficiaries). See Joseph R Long, "The Definition of a Trust", *Virginia Law Review*, 8: 6 (1921-22), 426-7.

⁹¹⁶ Some of the benefits of a corporate trustee are perpetual succession, a common seal, power to sue or be sued in its corporate name and transact other businesses in its corporate name including acquiring, purchasing, holding and enjoying movable and immovable property and by instruments under such common seal have the rights to sell, convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of any movable and immovable property owned. Sec. 2(3), Trustees (Incorporation) Act 1952 (Act 258).

⁹¹⁷ Ima Syuhada Ismail and Norazimah Mohd Rayes, "LZS (MAIS): Satu Transformasi", *Asnaf*, 1 (2006), 10-11.

8.2.2 Management of Zakat Investment

As a whole, LZS's commitment to managing zakat only has enable it to establish departments and divisions which are more specialized according to the nature of collection and distribution of zakat and its management. However, similar to MAIWP above, this institution also does not recognize investment of zakat as a separate method of distribution nor deserved a specialized committee to manage it.

The management of zakat investment is jointly shared by three main departments specialized in the distribution of zakat. These departments are segmented to manage different distribution agenda ranging from fulfilment of basic needs and investment in human, economic, social and religious development programmes. There are the Akademi Zakat Selangor (Academy of Zakat of Selangor), Jabatan Pembangunan Asnaf (Department of Asnaf Development), and Jabatan Pembangunan Ummah (Department of Ummah Development).⁹¹⁸

Academy of Zakat Selangor is responsible for conducting researches to enhance the efficiency of zakat collection and distribution as well as conducting programmes to improve the ability of both the recipients and the *‘āmilūn*. The main focus of the academy is to develop the human capital of the recipients. The academy organizes courses for developing the recipients' skills and knowledge and provides entrepreneurship coaching and mentoring services for the recipients who received zakat assistance.⁹¹⁹

The Department of Asnaf Development manages the economic developmental programmes and projects for the *fuqara'* and *masākīn*. All applications for capital assistance schemes under the recipients' developmental programmes will be filtered

⁹¹⁸ Interview with M. Fauzi Masdan, *Head, Economic Development Division, LZS*, 18 Sept. 2008. See also Appendix G (i).

⁹¹⁹ Normala Mohd Sa'ad, "Akademi Zakat Selangor Asnaf, Cabang Lahirkan Asnaf Cemerlang", *Asnaf*, 1 (2008), 10.

and decided by this department. It also monitors the operations of businesses and ventures under the capital assistance schemes and organizes entrepreneurship courses for the selected recipients. The department is divided into two divisions, Bahagian Pembangunan Ekonomi (Economic Development Division) and Bahagian Pengurusan Projek (Project Management Division). The Economic Development Division is responsible for supervising and mentoring the zakat entrepreneurs while the Project Management Division manages the community centres, welfare homes and cluster residential communities (*penempatan berkelompok*).⁹²⁰

The Department of Ummah Development manages the distribution of basic necessities to the *fuqarā'* and *masākīn* like food and financial assistance and also the functional needs of other recipients like travelling expenses for the *ibn al-sabīl* (wayfarers). It monitors and manages social and religious development projects including placement of students from *fuqarā'* and *masākīn* families at colleges, accommodation for the students, providing free dialysis treatment for patients that cannot afford the cost, religious education and so on.⁹²¹

All these departments are accorded autonomous control over the management decisions which give them an advantage of more operational flexibility, especially in the decision-making. Still, being a trustee for an Islamic fund and a subsidiary of MAIS, all of its activities including the zakat investments, must be conducted in compliance with *Sharī'a*, the state's Islamic law enactment and also any policy set by MAIS.⁹²²

⁹²⁰ <http://www.e-zakat.com.my>.

⁹²¹ <http://www.e-zakat.com.my>.

⁹²² LZS's mission reads, "To manage and ensure that the potential of zakat collection and distribution is channelled efficiently and effectively to Muslims in Selangor according to commendable values in Islamic laws with the aim to achieve a balanced socio-economic environment for the Muslims society. See <http://www.e-zakat.com.my> (accessed on 1 Nov. 2008).

8.2.3 Forms of Zakat Investment

As a whole, being an institution that only manages zakat has enabled LZS to introduce many investment projects and programmes which are more responsive to the need of different recipients.

For the *fuqarā'*, *masākīn* and *mu'allafat qulūbuhum*, zakat is disbursed for their long-term benefit in the forms of capital assistance for setting up and expansion of businesses and other income generation projects, courses that enable the participants to acquire specific skills, cluster income generating projects involving several number of recipients, facilities provided to ensure the success of the above projects and the development of the recipients and scholarships for tertiary education for eligible students.⁹²³

Capital assistance is offered in many forms: cash for initial establishment of ventures, revolving capitals and inventories, supplies and facilities to conduct income generating projects like transports, business premises, stalls, tents, workshop, land for farming, etc.⁹²⁴ The types of income generating projects covered under this capital assistance scheme include retailing, food production, farming, fishing and animal rearing.⁹²⁵ In 2007, about RM1.1 million was allocated under this category for the *masākīn* and a further RM0.042 million to the *mu'allafat qulūbuhum*.⁹²⁶

Most of the selected recipients for the capital assistance are provided with small amount of capital between RM2,000 to RM5,000. These capital assistances are allocated

⁹²³ It should be noted that at this institution, the above capital assistance and any allocation made for the recipients' long term benefit are not considered as investment activities. The institution prefers to refer to this type of zakat allocation as zakat assistance regardless whether it is for the purpose of fulfilling the consumption, functional or investment needs of the recipients. Interview with M. Fauzi Masdan.

⁹²⁴ Mohd Abdul Wahab Fatoni et al., "Pewujudan Usahawan Asnaf: Sorotan di Lembaga Zakat Selangor", in *Keusahawan Islam. Konsep dan Isu-isu Perlaksanaannya*, ed. Kamri et al. (Kuala Lumpur: Jabatan Syariah dan Pengurusan, Universiti Malaya, 2009), 141.

⁹²⁵ "Bantuan Modal Menjana Usahawan Asnaf", *Asnaf*, 1 (2007), 24.

⁹²⁶ See Appendix G (iii).

in a lump sum to those who want or are operating small business ventures like selling food at food stall, providing ancillary services like mowing lawns, etc.⁹²⁷

There is also bigger scale capital assistance between RM5,000 to RM50,000, allocated to several selected recipients after the suitable type of income generating venture for each of them is determined. These grants are issued in instalment basis based on the success of their ventures, and its demand for further financial support as well as their expansion potential.⁹²⁸ Normally, LZS will provide a small amount first like RM5,000 as the starting up capital for the new enterprises. At the same time, to the extent practicable, LZS will inform and help the recipients acquire reasonable financial support from other organizations besides the capital assistance from zakat. Only when their projects generates positive income and need additional financial assistance for expansion, further zakat funds will be released to them.⁹²⁹ Most often the capital assistance provided are in cash form and used to purchase supplies and inventories and pay the business premises' lease but there are also instances where the capital assistances provided by LZS are in fixed assets like stalls and lorries.⁹³⁰

⁹²⁷ Hailani Muji Tahir, "Konsep Agihan Zakat dan Aplikasi Semasa", *Jurnal Pengurusan Jawhar*, 3: 1 (2009), 46.

⁹²⁸ Hailani, "Konsep Agihan Zakat dan Aplikasi Semasa", 47.

⁹²⁹ Sity Fatima Azzuhara Sidek, "Usahawan Asnaf Zakat Bukan Sekadar Terima Bantuan", *Asnaf*, 1 (2007), 10.

⁹³⁰ In 2007, LZS spent RM300,000 to provide ten recipients with a small lorry each as their mobile business premises. In 2009, LZS provided another three recipients with a lorry each to help their businesses in supplying cooking gas. See "Tujuh Ibu Tunggal Terpilih Sertai 'Mobile Entrepreneur' MAIS", *Berita LZS*, 29 June 2007, <http://www.e-zakat.com.my/baru/sistem/berita2/baca.asp?idno=463>; "Tiga Asnaf Terima Bantuan Lori", *Berita LZS*, 12 Jan. 2009. <http://www.e-zakat.com.my/baru/sistem/berita2/baca.asp?idno=673> (both accessed on 1 May 2010).

Table 8.2 Allocations for Investment under the Groups of *Fuqarāʾ*, *Masākīn* and *Muʿallafat Qulūbuhum* at LZS in 2008 (in RM)

Types of Investment	Jan. - April			May - Sept.		
	<i>Fuqarāʾ</i>	<i>Masākīn</i>	<i>Muʿallafat Qulūbuhum</i>	<i>Fuqarāʾ</i>	<i>Masākīn</i>	<i>Muʿallafat Qulūbuhum</i>
Sewing Workshop		310,939			596,506	
Capital Assistance			102,000			40,738
Business		365,061			573,811	
Fishing		29,000			9,157	
Animal-rearing		47,603				
Farming					34,050	
Cluster Capital Assistance		734,467			560,116	
Ahsaf Project	2,554		9,071	112,159		200,497
Courses & Training	5,943	1,687,853	180,284		2,000,367	264,691
Community Centres/ Transit Home		181,402			199,018	
Scholarship		851,287	408,634		1,057,592	304,172
Total Distribution	116,248	12,817,195	3,163,141	7,101,800	26,607,609	5,636,674

Source: LZS, *Asnaf*, various issues.

LZS also provides special capital assistance for projects which need especially large capital. The amount of capital assistance provided is between RM50,000 to RM100,000 and so far three businesses under this scheme is ongoing: a laundry shop and two bakeries. Financing under this category at LZS is provided through a five year *mushāraka mutanāqīsha*⁹³¹ contract between LZS and the recipients. In this contract, the LZS will act as a financier who provides the fund for the business project and the recipient will become the entrepreneur. Financing will be released according to the

⁹³¹ *Mushāraka mutanāqīsha* contract is a diminishing partnership contract. Under this contract, a financier and his client will participate in a project whether to acquire a property or a commercial enterprise. The financier will provide all or part of the financing and the client will become the entrepreneur. The share of the financier on the project will be bought part by part periodically by the client until all of the financier's shares will be bought by the client. See Usmani, *An Introduction to Islamic Finance*, 82.

business needs during the contracted period and earnings from the business will be shared between LZS and the recipient based on 70:30 proportions. If the business becomes a success – that is, when the business no longer depends on zakat assistance to operate and the produce is sufficient to sustain the entrepreneur and his dependants – at the end of the contract, all of the assets and profits earned (except the shop lot which is owned by LZS) will be transferred to the entrepreneur.

“During this period of five years, any annual profit made will be split between the zakat entrepreneur (30%) and LZS (70%). The cost of investment includes an allowance for the effort spent by the entrepreneur. The entrepreneur will be given monthly allowance. The allowance is as agreed between LZS and the entrepreneur which normally ranges between RM1,000 - RM1,500.”⁹³²

The Department of Asnaf Development will monitor the recipient’s progress through an appointed accounting officer who will handle the business’ financial and accounting management. If during the contracted period, the business venture was found unable to achieve the targeted performance like unable to become financially independence of zakat, LZS has the right to reclaim the assets and pass the business to another recipient.⁹³³

“During the five year agreement, if the zakat entrepreneur’s venture is unsuccessful, he/she will be replaced with another recipient. LZS will place him/her in a smaller scale project. If this is also unsuccessful, then we [LZS] will provide them with the typical monthly financial assistance to cover their basic needs.”⁹³⁴

The ownership of zakat for the above forms of investment is fully transferred to the individual recipients where the recipients are given total control over the management of the investment. When very large zakat is involved, however, not all of the zakat is

⁹³² Interview with M. Fauzi Masdan.

⁹³³ Sity Fatima Azzuhara, “Usahawan Asnaf Zakat Bukan Sekadar Terima Bantuan, *Asnaf*, 1 (2007), 10-1.

⁹³⁴ Interview with M. Fauzi Masdan.

transferred directly to the recipient. In such cases, due to the huge amount of zakat involved, transfer of ownership of zakat which is spent for fixed assets, is retained by the LZS until the recipients showed his worthiness of the zakat at the end of the contractual period. The delay was justified by the cost of investment as well as the time needed for the recipients to establish a large enterprise.

Besides the capital assistance, LZS also conducts many courses for the *fuqarāʾ*, *masākīn* and *muʿallafat qulūbuhum*.⁹³⁵ In 2007, LZS spent more than RM9.4 million of zakat for this purpose, the highest amount of zakat spent for any type of investment activity.⁹³⁶ The courses provide them with trainings in specific skills that enable them to enter the labour market as well as enhancing their ability in managing their income-generating ventures. For those interested to receive capital assistance but without experiences in operating a business venture or who are not engaged in any income-generating work, a course known as 'Hijrahku Bina Insan' is arranged for them. The course's aims are to educate the participants to recognize their ability and instil the belief that they can achieve financial independency from any welfare organisations. During the training, applicants will be asked to sit for personality tests which LZS uses to determine suitable type of assistance for the recipients. Those capable and interested to set up businesses will be given capital assistance and entrepreneurship training while those who are more suited for the labour market will be given the opportunity to attend training to improve their skills and knowledge.⁹³⁷

For the selected group of promising entrepreneurs and also those who are already engaged in business project, LZS will conduct another training named 'Hijrah Niaga'. The training instructs the participants about business management, accounting,

⁹³⁵ For the *muʿallafat qulūbuhum*, LZS also provides fund for them to attend courses specifically arranged to help their understanding of Islam.

⁹³⁶ See Appendix G (iii).

⁹³⁷ Hisham Sabri and Zulkifli Hasan, "Zakat: Instrumen Penyumbang Pembentukan Usahawan", in *Prosiding Seminar Kebangsaan Pengurusan Harta Dalam Islam* (Bangi: Jabatan Syariah, Universiti Kebangsaan Malaysia, 2006), 226-7.

marketing and so forth. In addition to this, the participants also are provided with training that focuses on the skill and technical aspects needed for their specific businesses. For a participant who is keen on or already have the experiences in operating certain type of businesses like food processing for example, he will be given training relevant to his field. Only after going through all these courses, successful applicants will be given the capital assistances.⁹³⁸

Apart from the above courses, LZS also arranges further training by other organizations like the Malaysian Agricultural Research and Development Institute (MARDI), MARA, Small and Medium Industries Development Corporation (SMIDEC), and Economic Planning Unit (EPU) for these entrepreneurs.⁹³⁹ Those identified as non-interested to do businesses and more suitable for the labour market will be advised to attend a course known as 'Hijrah Kerjaya'. The course will expose the participants to technical skills according to their interests and ability like cooking, baking, sewing, craft-making, child-care, farming and agriculture know-how and etcetera.⁹⁴⁰

LZS also provides funding for collective investment projects known as cluster projects for the *fuqarā'*, *masākīn* and *mu'allafat qulūbuhum*. In this type of project, selected recipients that share the same interest are provided with shared assets that will assist their income earning activities. One such investment project is the sewing workshops that provide women from poor families with many dependants or single mothers without any income, the opportunity to earn their own income.⁹⁴¹ The workshops

⁹³⁸ Hisham and Zulkifli, "Zakat: Instrumen Penyumbang Pembentukan Usahawan", 226-7.

⁹³⁹ Sity Fatima Azzuhara, "Usahawan Asnaf Zakat Bukan Sekadar Terima Bantuan", *Asnaf*, 1, (2007), 10-1.

⁹⁴⁰ Mohd Abdul Wahab Fatoni et al., "Pewujudan Usahawan Asnaf: Sorotan di Lembaga Zakat Selangor", 139-46; Mohd Sabri Mat Nor, "Latihan: Wadah Asnaf Berdikari", *Asnaf*, 1 (2008), 12; Normala Mohd Sa'ad, "Akademi Zakat selangor, Cabang Lahirkan Asnaf Cemerlang", *Asnaf*, 1 (2008), 10.

⁹⁴¹ Currently there are 3 sewing workshops managed by the Economic Development Unit of the Asnaf Development Department. Each workshop is operated by 10 – 15 women from the *fuqarā'* and *masākīn* groups. Hailani, "Konsep Agihan Zakat dan Aplikasi Semasa", 51.

provide the women with the facilities to sew and supply school uniforms to poor students. For the workshops,⁹⁴² LZS funds both the fixed assets like the premises and the sewing machines and also the inventories like the clothing, and sewing accessories. The participants will be paid based on their production on top of certain fixed monthly allowances.⁹⁴³ Other cluster projects are like the collective agriculture farming and entrepreneur projects at Desa Ehsan and Desa Kasih where selected families are located and housed and given the capital and facilities to farm and operate their businesses.⁹⁴⁴

Compared to the capital assistances that are provided to individual recipients, the ownership of zakat in cluster projects is not as direct. For this type of investment projects, individual recipients only directly receive the supplies needed for their income generating projects and any profit that he made from the project. The ownership of the fixed assets bought for their operations like the premises and the equipments however are withheld by LZS on behalf of their group. Individually they as recipients of zakat have no claim against the ownership of these fixed assets.

LZS also establishes several facilities to complement the assistance programmes and further help the above recipients improve their income-generating ventures. The facilities include the Kumpulan Usahawan Asnaf Zakat (Consortium of Zakat Recipients Entrepreneurs) or KUAZ, a consortium comprises of recipients entrepreneurs and is a networking platform for them to share experiences and create trade associates;⁹⁴⁵ Pusat Latihan Asnaf Zakat (Centre of Recipients of Zakat Training) a centre that organizes and runs development courses for the recipients;⁹⁴⁶ and D'Asnaf

⁹⁴² Mohd Abdul Wahab et al., "Pewujudan Usahawan Asnaf: Sorotan di Lembaga Zakat Selangor", 142.

⁹⁴³ Suhaili Sarif et al., "Modal Niaga: Pembiayaan Melalui Dana Zakat", in *Keusahawanan Islam: Konsep dan Isu-Isu Pelaksanaannya* ed. Nor `Azzah Kamri et al. (Kuala Lumpur: Jabatan Syariah dan Pengurusan, APIUM, 2009), 103-4.

⁹⁴⁴ Ahmad Shahir, "Paradigma Pengurusan Institusi Zakat Pengalaman LZS (MAIS)", 15.

⁹⁴⁵ See <http://www.e-zakat.com.my/baru/agihan/kuaz.asp>.

⁹⁴⁶ See <http://www.e-zakat.com.my/baru/agihan/pulaz.asp>.

Edar which promotes and markets produce made by the recipients under one brand of KUAZ.⁹⁴⁷ The transfer of ownership for the zakat fund invested in these facilities is basically withheld from the recipients. Still the recipients receive benefits of the funds through the services provided by these facilities.

“LZS will buy the produces from these cluster projects and sells them at d D’Asnaf Edar shop. All the proceeds will be given to those participating in the project on an individual basis. LZS will sell them to the market at a slightly higher price to compensate for cost of transport for example.”⁹⁴⁸

There are also investments of zakat for the general Muslims’ benefits, which are made under the groups of *fī sabīl li Allāh*. The investment projects include projects for religious education and social rehabilitation like for the development and maintenance of religious education institutions,⁹⁴⁹ construction and refurbishment of worship venues, and allowances to care centres, orphanages, etc.⁹⁵⁰

Apart from the above investment projects which are funded via each group, there are also investment projects which are undertaken without specific allocation to any of the group of recipients. These projects which are funded by surpluses of zakat after distribution are mainly in the form of real asset acquisition and investment in banking products.⁹⁵¹ In 2007 and 2006, LZS’ zakat investments in Islamic fixed accounts at local

⁹⁴⁷ Sity Fatima, “Usahawan Asnaf Zakat Bukan Sekadar Terima Bantuan”, 11.

⁹⁴⁸ Interview with M. Fauzi Masdan.

⁹⁴⁹ Examples are like salaries and allowances provided for teachers at the Islamic religious schools under the control of MAIS. In 2009, LZS paid RM10 million for these teachers, and RM4 million for textbooks at the state’s religious school. “LZS Agih Pelbagai Bantuan Lebih RM30 juta”, *Berita LZS*, 28 April 2010, <http://www.e-zakat.com.my/baru/sistem/berita2/baca.asp?idno=785> (accessed on 1 May 2010).

⁹⁵⁰ See Appendix G (ii).

⁹⁵¹ One such asset acquisition was the purchase of a building suitable for business premises at the centre of Klang, one of the major towns in Selangor. Interview with Aidi Munawir Ahmed Shukri, *Acting Deputy Chief Manager (Management) and Head, Department of Finance and Human Resource, LZS*, 22 Jan. 2009 .

banks were valued at RM51.7 million and RM15.2 million generating RM713,803 and RM475, 765 returns respectively.⁹⁵² (See Table 8.3)

Table 8.3 Total Zakat Revenue of MAIS and Its Subsidiaries from 2005-08

	2005	2006	2007
Total Zakat Revenues	135,402,951	161,250,488	203,066,167
Zakat Collection	134,449,975	160,514,013	202,089,144
Profits from Current Account	416,218	191,167	263,220
Profits from Fixed Deposit Accounts	379,373	475,765	713,803
Other Income from Zakat	157,385	649,543	

Source: MAIS, *Laporan Tahunan MAIS*, various issues.

8.2.4 Determination of Projects

Programmes and projects utilizing zakat at LZS by and large are meant to achieve the general objectives stated in the state's administration of Islamic law enactment which are to encourage, assist, and undertake economic and social programmes that benefit the Muslims society in accordance to Islamic law.⁹⁵³ Special attention is given to improve the recipients' economic and social development particularly in ensuring that those who are in poverty are provided with the opportunities and facilities that assist them to generate their own income.⁹⁵⁴

According to Makhtar, the General Manager of LZS (from 2006 till now), the reasons behind the introduction of capital assistance and entrepreneurship programmes are the difficulties faced by the poor in getting financial aids for their income generating ventures as well as their lack of information and knowledge to properly operate them.⁹⁵⁵ Similarly, the acquisition of assets like business premises by LZS is with the

⁹⁵² MAIS, *Laporan Tahunan MAIS* 2007, 33.

⁹⁵³ Sec. 7 (1), Administration of Islamic Law Enactment (Selangor) 2003.

⁹⁵⁴ Aktar, "Program Keusahawanan Cerahkan Masa Depan Asnaf", *Asnaf*, 1 (2007), 6.

⁹⁵⁵ Aktar, "Program Keusahawanan Cerahkan Masa Depan Asnaf", 6.

aim to provide the entrepreneurs from the *fuqarāʾ* and *masākīn* with strategic venues that enable them to operate their businesses.

“We proposed to acquire a whole block of business premises in Klang Central which was unimaginable for the *faqīr* and *miskīn* to acquire. These premises will be leased out to the recipients and the rents will be channelled back to the zakat fund.”⁹⁵⁶

The determinations of the appropriate developmental projects and programmes that can fulfil these purposes involve inputs from both the relevant departments and also the targeted recipients. In determining the projects, the designated departments at first will conduct researches and propose the appropriate projects and programmes to the LZS’s top management which include also the Secretary or Chairman of MAIS. They then will decide on whether the projects should be implemented or not, and will make the decision on the necessary budget and financing.

In determining the feasible business enterprises for the recipients for example, LZS through its Bahagian Penyelidikan dan Pembangunan (Research and Development Division), a division under the Akademi Zakat Selangor (Academy of Zakat of Selangor), will conduct researches and surveys to identify the types of business enterprise which are viable and also according to the recipients’ need and ability. The businesses selected are those that are easily managed and have normally a steady market like laundry, car workshop, catering and food processing. For the types of venture that the recipients want to participate in and the amount of zakat allocated for their business venture, LZS will make a decision based on their own interest and experiences, besides the projects’ feasibility and potential and also the recipients’ abilities to operate them. Those recipients, who have the potential to operate more established businesses, are provided with higher capital and the necessary support to form or operate bigger scale businesses.

⁹⁵⁶ Interview with Aidi Munawir Ahmed Shukri.

“Whether the recipients applied [for certain type of business] or based on our surveys, we are the one who make the final decision. But normally, we chose [the ventures] that the recipients are capable of handling. With our guidance, we let them proceed with the approved ventures and we constantly monitor them.”⁹⁵⁷

8.2.5 Selection of Recipients

Not all of the recipients of zakat are chosen to partake in zakat investment programmes or projects. Only those who fulfilled certain criteria which show their eligibility as recipients of zakat and their ability to make the projects successful are chosen.

For all types of assistance whether for the capital assistance, scholarships and training, each of the applicants must first fulfil the general requirements of eligibility like faith, local residency, nationality (only Malaysian is allowed), and have an income which is below the *ḥadd al-kifāya*. The applicants also will be accepted only if they are not receiving any other assistance from other sources like from government sponsored financing and so forth.⁹⁵⁸ Apart from these general requirements, each of the assistance also has their own specific requirements which will attest the eligibility of the recipients further. The applicants for capital assistance to become eligible, for example, must already operate a business or at least show their interest in their selected ventures and have the drive to be independent of zakat.⁹⁵⁹ The relevant departments then will investigate each of these applicants’ background and interest. For the capital assistance projects, a secretariat is established especially to carry out the task.⁹⁶⁰

It is noted that the selection process for the capital assistance is conducted continuously throughout the period of assistance and becomes more meticulous as the amount of

⁹⁵⁷ Interview with M. Fauzi Masdan.

⁹⁵⁸ An applicant must be a resident of Selangor for no less than 5 years to be eligible. <http://www.e-zakat.com.my/baru/agihan/mohon.asp> (accessed 2 Apr. 2010).

⁹⁵⁹ http://www.e-zakat.com.my/baru/agihan/b_umum.asp (accessed 2 Apr. 2010).

⁹⁶⁰ Aktar, “Program Keusahawanan Ceraikan Masa Depan Asnal”, 7.

zakat involved increases. The recipients who are selected for possible capital assistance based on their interest and ability will undergo basic business courses including courses for financial management and motivation, during which LZS will conduct a more thorough selection process. Those who showed interest and willingness to be self-independence will be given advance courses in their chosen field of businesses where the main purpose is to determine potential entrepreneurs. Only then will those who are selected are given capital assistance, education and training as well as continuous monitoring on their ventures. During the period of capital assistance also a competent consultant will be appointed by LZS to supervise the recipients' business ventures. The consultant not only will monitor the recipients' business operations but also will advice LZS on whether the recipients should continue the project or be replaced with other recipients.⁹⁶¹

Noting the above requirements outlined and the filtering mechanism applied by LZS in selecting the recipients, it can be concluded that in investing zakat, LZS takes serious measures to ensure that only eligible recipients are chosen for the investment projects.

8.2.6 Allocations of Zakat for Investment

Similar to the MAINs, LZS also prepares its annual budgets comprising of expected zakat revenues and expenditures. In these annual budgets, expectations for all operational costs of zakat investment projects and some costs of asset acquisition and development are included. The operational costs include capital assistances for the recipients for setting up or expanding their businesses and trades, costs for conducting their training and courses, scholarships, and operating and maintenance costs for

⁹⁶¹ Sity Fatima, "Usahawan Asnaf Bukan Setakat Terima Bantuan", 10.

facilities provided for them like for the sewing workshops, Pasar Rakyat Asnaf⁹⁶², community centres, etc. The costs of acquisition and development that are included in the budget are those for acquiring and developing assets which benefits the Muslim community as a whole. These cost are considered as one of the expenditures under the *fi sabīl li Allāh* group. These include the establishment and development of religious schools, mosques, and praying venues.⁹⁶³

Costs for the acquisition and development of assets which will be owned by LZS but which benefits and services are to be utilized by the recipients, are included in a separate budget which is prepared only when excess of collection is actualized in that particular year. Such acquisitions and development are like the purchasing of business and residential premises⁹⁶⁴, lands, community centres, and the construction of hostels for students from the *faqīr* and *miskīn* family.⁹⁶⁵ Since the acquisition of assets for the *fi sabīl li Allāh* group are already included in the main budget, it was observed that the allocations from the excess of zakat are meant for the benefits and services of certain groups of recipients only like the *fuqarāʾ*, *masākīn*, *riqāb* and *muʿallafat qulūbuhum*.⁹⁶⁶

⁹⁶² This is a Saturday morning market held in Shah Alam, a town in Selangor. The market is organized jointly by LZS and the state government of Selangor to enable the recipients of zakat to sell and market their produce. "LZS (MAIS) Sedia RM100,000 Bangunkan Pasar Rakyat Asnaf", *Berita LZS*, 5 Sept. 2007, <http://www.e-zakat.com.my/baru/sistem/berita2/baca.asp?idno=447> (accessed on 1 May 2010).

⁹⁶³ Interview with Aidi Munawir Ahmed Shukri; Lembaga Zakat Selangor, *Laporan Pengurusan Zakat Selangor 2007*, 30-1.

⁹⁶⁴ The premises will be rented out to both the recipients and non-recipients. Rents collected from the non-recipients will be directed to the zakat fund.

⁹⁶⁵ Interview with Aidi Munawir Ahmed Shukri.

⁹⁶⁶ At LZS, a *faqīr* is a Muslim who has no *halal* income which can provide for his dependant and his needs including food, clothing, home and other needs. While a *miskīn* is a Muslim who owns some type of *halal* wealth but the wealth is not sufficient to provide fully for his dependant and his needs. Zakat for the *riqāb* are spent for social rehabilitation like provisions for maintaining homes for delinquent teenagers. *Fi sabīl li Allāh* is defined as any deeds that benefit Muslims and the religion of Islam. See http://www.e-zakat.com.my/baru/agihan/asnaf_layak.asp.

Zakat revenue in LZS in 2008 was RM244.4 million. From this amount RM189 million of zakat was distributed. The balance of zakat revenue that was undistributed that year was RM55.4 million.⁹⁶⁷ The highest portion of the total zakat distribution was allocated to the group *fī sabīl li Allāh* at 33.6% (RM63.6 million). The group of *masākīn* received 27.1% (RM54 million) of the total zakat revenue, followed by the *‘āmilūn* at 15.5% (RM27.4 million). Allocation for the group *fuqarā’* was small at RM6 million,⁹⁶⁸ indicating low numbers of *fuqarā’* that received zakat.

In 2007, a total of RM202.2 million was collected and from this amount, RM177 million was distributed.⁹⁶⁹ The pattern of allocation was similar to the year 2008, where the highest allocation was made to the group of *fī sabīl li Allāh* at 37.4% (RM66.2 million), followed by the group of *masākīn* at 30.5% (RM54 million).⁹⁷⁰

Allocations for investments targeted at the *masākīn* compared to the *fuqarā’* were considerably larger, understandably due to the *faqīr*’s higher demanding consumptive needs especially for food, home, financial and basic education assistance. Another reason is the low number of *fuqarā’* who receive zakat, reflected by the small amount of zakat allocation to this group. Investment allocations for the *fuqarā’* and *masākīn* were 7.3% and 36.1% respectively from the total distribution. Investment allocation with direct economic purposes for the *masākīn* group⁹⁷¹ for 2007 was very low at 24% compared to the total allocations for investment allocated for the group for that year. A major portion (67.3%) of the allocations for investment for this group was meant for human developmental programmes like courses, training and scholarships.⁹⁷²

⁹⁶⁷ See Appendix B.

⁹⁶⁸ See Appendix E.

⁹⁶⁹ See Appendix B.

⁹⁷⁰ See Appendix E.

⁹⁷¹ These include capital assistance to individuals and cluster groups.

⁹⁷² See Appendix G (iii) and G (iv).

Allocations for investment made for the *mu'allafat qulūbuhum* in 2007 was quite high at 40.5% where again majority of it was spent on expenditures to enhance their human capital and to increase their understanding of Islamic teachings. The bulk of allocations for investment made under the group *fī sabīl li Allā* also were spent for similar purposes.⁹⁷³

LZS allocates zakat based on the purposes of its distribution which are poverty alleviation and enhancing the socio-economic development of Muslim society in Selangor. These are undertaken through five main development programmes; social, economic, education, religious institution and human capital development programmes.⁹⁷⁴

Allocations under the social development programmes include allocations for housing, food, healthcare and other basic needs. Allocations under the economic development programmes include capital assistance given to individuals either through individual allocations or group allocations in collective economic projects like the Pasar Rakyat Asnaf, collective farming and small scale industry. Allocations under these two programmes are made mainly under the group of *fuqarā'* and *masākīn* except for the *fuqarā'* and *masākīn* under the *mu'allafat qulūbuhum* category. Allocations under the education development programme include for education supplies and supports for education at primary and secondary level for the *fuqarā'* and *masākīn* family and scholarships for them, the *mu'allafat qulūbuhum* and also for the Muslim society at large under the *fī sabīl li Allāh* group. Allocations under the religious institution development include those for the development and renovation of religious schools, institutions and venues like the mosques and *surau*⁹⁷⁵. Allocations under the human capital development include expenditures spent for short courses and skill training to educate

⁹⁷³ See Appendix G (iii) and G (iv).

⁹⁷⁴ LZS, Laporan Pengurusan Zakat Selangor 2007, 24.

⁹⁷⁵ *Surau* is a Malay word that refers to a smaller place of community worship compared to a mosque.

and train the *fuqarā'* and *masākīn* to earn a better living, the *mu'allafat qulubuhum* and society at large for better understanding of Islamic teachings.⁹⁷⁶

In financing the projects that benefited the recipients, it is noted that the Majlis Agama Islam Selangor (MAIS) also employ other sources than zakat. An example is the *bay' bithaman ājil* (BBA)⁹⁷⁷ financing which is used to finance the development of its apartments meant as temporary homes for the *fuqarā'* and *masākīn*⁹⁷⁸ and business premises which are rented to the recipients receiving the capital assistance scheme.⁹⁷⁹

8.3 Conclusion

Examination of the investments of zakat at the two zakat institutions above reveals that zakat was invested mainly to achieve four objectives, which are to provide development programmes that are targeted to the *fuqarā'* and *masākīn* groups, to provide projects that benefit the Muslims in general, to increase the collected zakat fund and to expand the assets of Muslims.

The development projects and programmes funded by zakat are mainly targeted at selected recipients from the *fuqarā'* and *masākīn* groups and are structured to assist them in the long run. These projects are in two forms. One is the capital assistance and training provided to empower the recipients with the opportunities for employment and generating their own income. The capital assistance is different from the normal hand-outs received by the recipients since it is meant for definite development

⁹⁷⁶ LZS, Laporan Pengurusan Zakat Selangor 2007, 24-32.

⁹⁷⁷ BBA is a deferred sale financing where the financier will pay for the asset which is interested by his client to the original supplier. The financier will then sell the asset to the client at a mark up price and the client will pay for the asset's price in instalments during the contracted period. See Usmani, *An Introduction to Islamic Finance*, 55.

⁹⁷⁸ Normala Mohd Sa'ad and Ima Syuhada Ismail, "Penempatan Asnaf Dahulu dan Sekarang", *Asnaf*, 3 (2007), 10-11;

⁹⁷⁹ The financing was provided by Bank Muamalat Berhad, a domestic Islamic bank. MAIS, *Laporan Tahunan MAIS 2007*, 36-7.

purposes and normally well above the standard *ḥadd al-kifāya*. The recipients also are selected by certain committees through several filtering mechanisms and are mostly continuously nurtured and monitored by the institutions to ensure that the specific purposes of the development programmes are achieved.⁹⁸⁰ Zakat also is used to fund skill and training courses for selected recipients from the *fuqarā'* and *masākīn* groups. The courses are designed for their human development by exposing them with the necessary skills and knowledge that can assist them securing an employment or operate their own entrepreneurship.

The second form of investment that is meant for the development of the *fuqarā'* and *masākīn* is the establishment of facilities that provide the recipients of these capital assistances with the necessary support to assist and ensure the success of their ventures.

For the first form of investment, transfer of ownership for the investment projects are generally fully executed since zakat is given to the recipients and they directly benefit from it. For the second form of investment, however, the recipients do not directly received the full ownership of the distributed zakat like in standard zakat payments but enjoy the beneficial ownerships of zakat instead. The ownership of zakat is either collectively shared between the recipients, or relatively owned by the zakat institutions on their behalf. There are also cases where zakat is paid directly to the organizations that provide the recipients with the necessary supports and services.

Even though a full ownership of zakat is not conceded to the recipients, the withholding of the ownership is justified by the nature of such facilities and the sheer benefits of the facilities to the recipients. The facilities increase the possibility of success

⁹⁸⁰ A study on the recipients who had received capital assistance from LZS and MAIWP found that the number of supervisory visits and suitability of prior job experience to project undertaken were statistically significant in determining the success of the project. See Nor Ghani Md Nor, Abd Razak Din and Mohd Ali Mohd Noor. "The Contribution of Zakat as an Income Creating Asset in Selangor and Wilayah Persekutuan, Malaysia." *Jurnal Ekonomi Malaysia*, 36 (2002), 69-80.

in achieving the enrichment purpose of zakat for the poor. The cost involved and the man power needed in establishing and maintaining such facilities covet a public intervention.

Investments of zakat aimed for the general Muslims' benefits are made under the group of *fi sabīl li Allāh*. The amount of allocations for investment projects under this group are the highest compared to allocations made under other groups. High amount of investment under this group indicates that zakat is an important tool adopted by these institutions to develop Muslim community as a whole. Similar to the investment projects aimed for the development of the *fuqarā'* and *masākīn* groups, transfer of ownership for this form of investment is completely executed where zakat is distributed directly to the recipients like in scholarship and training. The expenditures in fixed assets and organized management structure like mosques, schools and community centres, however, provide the recipients with beneficial ownerships only.

It is noted that in managing all the above forms of investments, the zakat institutions have taken into task more than the required measures that are outlined by the principles of zakat distribution. In selecting the recipients for the capital assistances and training, the institutions not only impose the standard criteria of eligibility of poor recipients, but also choose them based on their interest and ability in managing the projects and benefiting from them. For the recipients of the capital assistances, the institutions have taken an active role in minimizing the probability of failure by organizing courses that will assist the selected recipients' understanding and ability to operate their ventures. The institutions also provide additional support through continuous monitoring and other support facilities like setting up marketing agencies and establishing links with other agencies to ensure the success of the investment purposes. In addition to this, the forms of financing employed for bigger size capital assistance is not as straight forward as the micro financing schemes. For the big scale assistance, LZS introduces instalment payments of zakat which are based on the

participating recipients' need and their business performances. Additional capital assistance will only be provided when the recipient's business venture shows positive progress.

Apart from the above forms of investment which are undertaken through post distribution allocations of zakat, there are also investments of zakat which are sourced from undistributed (excess of) zakat revenue. In the case of MAIWP, the amount of undistributed zakat reached about one third of the total collection annually in the period between 2004 to 2008. Even though this form of zakat investment is aimed to increase the collected zakat fund and to expand Muslims' assets in general i.e. the *fi sabīl li Allāh*, however, the benefits of the zakat funds to the other seven recipients of zakat are very doubtful. Some of these undistributed zakat was spent in the acquisition of assets like lands, buildings and residential properties which are utilized for the benefits of Muslims particularly the *fuqarā'* and the *masākīn*. However, the bulk of these undistributed zakat was invested in financial products, shares whether in the institutions' subsidiaries or other companies which revenue was mainly for the zakat institution.

For this form of investment, even though zakat is withheld from distribution, the issue of delaying the payment of zakat is not considered a concern by the zakat institutions. The reason is that, zakat utilized in this form of investment is the excess of zakat collection after distribution to the recipients.⁹⁸¹ As all of the need of the recipients are fulfilled, the zakat institution as representatives of the state, have the right to decide the best method to utilize the undistributed zakat. Investing the undistributed zakat is deemed financially beneficial as it can avoid the depreciation of zakat and at the same

⁹⁸¹ See Ahmad, "Pelaburan Zakat di Malaysia: Kajian di Batulmal Msajlis Agama Islam Wilayah Persekutuan", 77.

time increase the value of zakat fund through the returns generated from the investments.

There are, however, a few concerns related to the utilization of the undistributed zakat for investments. First, the exact cost and return of these investments are not clearly stated by these institutions. The cost and return of these investments are important given that any reduction in the invested zakat that is due to negligence must be replaced by the institutions. The exact cost and return of these investments are more pertinent to the zakat institutions which manage not only zakat but also other religious sources like MAIWP. This is because when a mixture of financing is used, the amount of zakat utilized in the investments must be clearly known to ensure that the exact amount will be returned to the rightful recipients. Similarly, any benefit generated from the invested zakat must be clearly distinguished from the returns generated from other sources, to ensure that they are not benefited by other than the rightful recipients.

Second, the management of risk for this form of investment was found lacking. Even though there are measures like investment of zakat in near liquid assets for easy convertibility to cash and a *fatwā* by the Mufti of Wilayah Persekutuan regarding management of losses in share holding, the study finds no definite replacement policy for the losses incurred. Though such policy is unnecessary for banking certificates which are guaranteed principally by the government, for other forms of investment, their exposure to losses is something that cannot be ignored.

And finally, the withheld zakat might not be due to the fulfilment of the recipients' need as claimed by the institutions but actually due to the inefficiency of the institutions' distribution mechanism. Previous studies on the institutions' performance indicated that their inefficiency in distributing zakat was one of the reasons why owners of zakatable wealth paid their zakat directly to the recipients. It is important for the zakat institutions to ensure that all of the recipients' demanding need is fulfilled

first before utilizing the excess of zakat revenue for investment. This is to warrant that the recipients' rights on zakat are not forsaken for other investment purposes.

The above discussion on the allocations for zakat investment at these institutions also reveals that investment of zakat is undertaken for selected groups of recipients only. There are the *fuqarā'*, *masākīn*, *mu'allafat qulūbuhum* and *fī sabīl li Allāh*. The other three groups of recipients did not receive an investment allocation because their zakat distribution purposes are only for functional and consumptive purposes only. Targeting investment of zakat for *fuqarā'* and *masākīn* is in consonant with the objective of eradicating poverty. Spending a bulk of zakat on *fī sabīl li Allah* particularly on public projects, as shown above however, will induce an opposite result as those who are more affluent will have better access to the development projects.

The process of managing and financing zakat investments at these institutions is very much guided by the religious rules pertaining to zakat outlined in the Quran and hadiths and which has been derived and formed as legal rules for Islamic administration of zakat. As a modern organization however, these institutions cannot escape the influences of modern organizational and financing system. The process of financing at these institutions has responded to the organizational changes and contemporary needs resulting in a diversity of interpretations and practices of the *Sharī'a*.

The modernization of the administration of zakat has made necessary the advance planning of zakat revenue and expenditures through the budgeting process to ensure the smooth management of the accumulated zakat. This is in contrast to the traditional allocation of zakat which is conducted locally and distributed directly. Allocations were basically made when zakat revenue was already in hand and disbursed at the place of collection. As a result of the budgeting process, there were large amount of zakat that remained undistributed and withheld by the institutions. This available zakat became a

major source of fund for the institutions to invest in projects that benefit the Muslims in general and the recipients of zakat in particular.

Modern methods of financing are employed in transferring the zakat to the recipients. Instead of allocations in cash and kinds which can benefit the recipients directly in their investment projects, allocations for zakat were also made to finance development projects which ownership remains with the MAINs though the benefits of the projects are transferred to the recipients. In addition to this, zakat was also invested in modern financial and banking investments to avoid the excess of zakat being idle in the loft of the *bayt al-māl*. For projects meant for the benefits of the recipients that involved high amount of capital and which will be paid back in instalments using future zakat revenue, modern forms of external financing were utilized. The financing utilized was the contemporary approved forms of Islamic financing.

Besides the above findings, it is also worth noting that at these institutions, the term zakat investment is mainly used to refer to assignment of zakat to certain products or projects with expected monetary returns.⁹⁸² Long-term developmental programmes like the capital assistance and human development schemes which are meant for the recipients' long-term benefits are not considered as investment projects but as part of zakat assistance schemes.

The reluctance to associate these long term development projects with investment is due to the perception of the public that investment is an activity that is performed by commercial organization to seek future incomes. Zakat is also normally associated with distribution of cash or kind to fulfil the consumption and basic needs of the recipients only. Thus any connotation of zakat with investment is deemed unsuitable for a religious body entrusted to manage and distribute zakat to the recipients. This must have forced the MAINs to minimize any association with zakat investment to ensure

⁹⁸² See Ahmad, "Pelaburan Zakat di Malaysia", 81-5.

their public image as a medium between payers and recipients is not tainted, which subsequently might affect their collection. Full recognition of zakat investment as another purpose of distributing zakat besides for consumption and functional purposes, however, is important to ensure that investments of zakat are undertaken more seriously to benefit the recipients.

In a nutshell, being the manager of a religious fund, these institutions in managing zakat investment are very much influenced by the principles of zakat distribution as outlined by the classical jurists. Still given the different situations and requirements of today, some new *ijtihad*s regarding zakat investment has also been assimilated in its management especially to ensure that the purposes of investing zakat is achieved. Despite the modern organizational changes of the management of zakat, still as a whole, the managing and financing process for zakat investments at these institutions are very much undertaken according to the modes and methods approved by the *Sharī'a*, notwithstanding some contemporary adaptations to ensure that the purposes of zakat are preserved.

Chapter Eight

Conclusion and Recommendations

As one of the main pillars of Islam, zakat is given a sacred status by the *Shari'ah*. Muslim jurists have endeavoured to provide sufficient precautions and safeguards in order to ensure, as much as possible, that payment of zakat is fully observed by those eligible owners of zakatable wealth, or the zakat institutions as their representatives. This objective has continued to be relevant in the interpretation of Islamic rules and principles regarding the investment of zakat and its conditions.

There are two main concerns in managing zakat investment; achieving the economic purposes of investment and at the same time ensuring that its operation conforms to the principles of *Shari'ah*. In this modern day, it becomes important to see how the zakat institutions manage zakat investment and adapt it to the contemporary needs of Muslim societies, at the same time aligning it to the Islamic rules, principles and purposes underlying the payment and distribution of zakat.

The study asserts that, in general, the principles of zakat payment and distribution as delineated by the majority of classical jurists limit the types and scopes of zakat investment. The necessity of an immediate payment of zakat and full conference of ownership to individual recipients, for example, denies the possibility to invest zakat in non-liquid investment projects or in projects which offer beneficial ownership only to

the recipients of zakat. The study asserts that under certain circumstances, however, the classical jurists allowed some flexibility especially to the state in the management of zakat. The state is accorded the rights to decide the recipients and the amount of zakat allocated to them. The state is allowed to delay the payment of zakat when it is beneficial to Muslim society. The state also has the authority to allocate zakat for investment under the allocation for distribution to the recipients if the investment need can be proven as part of a recipients' need beside their consumptive and functional needs. The study finds that investment of zakat can only be undertaken when zakat revenue is significant enough to cover the recipients' consumptive and functional needs and still has balances to fund investment activities, for the priority in the distribution of zakat is to fulfil the immediate need of the recipients first.

Modern Muslim jurists recognizing the benefits of zakat investment to Muslim society, especially for the poor, in general allow zakat institutions to invest zakat. However, they put up several requirements due to the concerns that several principles of zakat distribution might be violated if an investment of zakat is undertaken liberally. The requirements include: (a) to undertake the investment in a diligent and secure manner; (b) to only undertake investment activities that conform with *Shari'ah*; (c) to immediately liquidate the investment when the zakat is needed by the recipients; (d) to eventually transfer all the invested assets to the recipients; and (e) to provide guarantee against loss.

The study finds that the zakat institutions in Malaysia in managing zakat investment, undertake some measures to ensure that it is undertaken in accordance to the *Shari'ah*. In investing zakat, the institutions ensure that the projects are aimed for the benefits of the recipients. These are reflected by the mechanisms that they employed in determining the investment projects and selecting the participating recipients.

In managing zakat investment, the study finds that the institutions also adopted other reputable opinion asides from the main schools of law, which may seem more

conducive to the public interest instead of the majority view. A big portion of allocation for investment for the groups of recipients was allocated under the *fī sabīl li Allāh* group under the espousal of the liberalized meaning of *fī sabīl li Allāh* that enabled the institutions to invest zakat to the general Muslim public. As shown in the above study, allocations under the broad meaning of *fī sabīl li Allāh*, however, tend to favour those who are more affluent because they have better access to the development projects. This contradicts with the main aim of zakat investment as proposed by Muslim economists which is to eradicate poverty among the *fuqarā'* and *masākīn*. Hence, the study suggests that the allocation for investment should be spent more to achieve this enrichment purpose than for the general benefits of the Muslim society. The reason is because this purpose has been emphasized many times in the Quran and the Sunna and the need of this group is more pressing.

The institutions also adopted the view of non-restrictive transfer of ownership of zakat. Many of the zakat investment projects were owned and managed by the zakat institutions and provided only beneficial ownerships to the recipients. The restrictive transfer of ownership was justified by the huge amount of zakat that was spent for the projects, as well as the need for a centralized management and supervision of the projects.

The study finds that there is no clear policy about guaranteeing a replacement for any zakat that was lost in the pre-distribution investment activities. There are many preventive measures taken by the institutions, like the filtering mechanisms employed in selecting the recipients and the investment projects, but counter-measures to replace any loss made is nearly non-existent. Preventive measures may be sufficient when full transfer of ownership of the investment projects is accorded to the recipients, like with the capital assistance projects. However, for investment projects which are funded by undistributed zakat, counter-measures like replacement policies should also be clearly outlined by the zakat institution, if not by the codified zakat laws. The problem is more

imminent given the non-liquidity of some of the investment products and their possible risk of loss.

The study also finds that the policy regarding the liquidity of the investment products for the undistributed zakat is lacking. As noted above, the allowance to invest the excess of collection comes with the stipulations that the invested zakat can be converted to cash at any point of time when the need for distribution arises and the risk is minimized. Investment in the banking investment certificates fulfils both of these requirements, but investment in shares, unit trusts and subsidiaries might take longer to be converted into cash and can expose any zakat spent to a higher risk of loss. Investments in real properties also carry this liquidity risk. Thus, it is pertinent that the institutions have some policy regarding the liquidity of the investments that can be financed by this excess of zakat.

Apart from the post-distribution allocation for investment, the zakat institutions also utilized undistributed zakat or surpluses of zakat to finance investment projects. Our examination of the amount of zakat collection and distribution reveals that most states recorded surpluses of zakat almost every year. As a readily available source of zakat, since it is surpluses of zakat collection after distribution, it can be concluded that a big portion of the zakat revenue is always available for investment. The continuous gap between collection and disbursement from the onset of zakat institutions in the country, whether intentionally or without purpose, has created opportunities for the MAINs to invest in real properties, financial products and equity holdings. These projects not only benefit the MAINs through their assets expansion but also the Muslim community at large.

The study asserts that if surpluses of zakat revenue are the main force behind the investment of zakat, then that approach is justified, and investment itself can become efficiently a measure to increase the undistributed zakat fund and prevent its depreciation over time, but if the inefficiencies of management of zakat dominate the

set of causes that create the surpluses, then the reason behind the investment activities is misleading, and not only the policy prescriptions may be perverse but the validity of the investment of zakat from the *Shari'ah* point of view can be questioned.

The study finds that the exact amount of investment of zakat, the management costs and the returns of the investment were not clearly revealed to the public. Disclosure of the processes of zakat investment and related information must be incorporated together with other activities conducted by the zakat institutions such as through their websites and annual reports. Informing the stakeholders of zakat on the composition, management, competence and decision-making of the zakat institutions about the investment of zakat will avoid misunderstanding especially by the owners of zakat. Their wrong perception regarding the inefficiency of the zakat institutions will turn them away from paying zakat through these institutions. Since this issue has not received sufficient attention by the zakat institutions or their respective MAINs, policies need to be put in place that would ensure adequate disclosure.

In our earlier discussion on the surpluses of zakat revenue, we have seen that huge amount of zakat remains undistributed at these MAINs. The surpluses are mainly invested in projects that benefit the general Muslim society and for the expansion of the MAINs' properties. The study also notes that huge amount of zakat were deposited in bank accounts.

The study believes that all the above anomalies (huge undistributed zakat, non-transparency of the cost and revenue of zakat investment and huge bank deposits at the MAINs) are caused by the fact that zakat remains as the main revenue for these MAINs. Alternative fundings must be found at least to finance the operating costs of the MAINs to ensure that zakat is fully utilized for the sake of the eligible recipients.

The study supports the move to invest these surpluses so as to avoid the corrosion of the zakat fund value. The study, however, suggests that the surpluses are invested in

projects that directly benefit the poor among the recipients since their need is more demanding. The accrued return from the bank accounts, for example, can be channelled directly to the recipients who are non-capable of work, to provide them with extra cash and improve their lives.

Regarding the laws and guidelines on zakat investment, the study finds that there are no specific rulings on zakat investment in the states' administration of Islamic law enactments. These enactments, in general, provide the MAINs with the authority to promote and develop the social and economic wellbeing of Muslims. The MAINs were allowed to undertake any investment activities under the Akta Pemegang Amanah [Trustee Act] 1949 and to engage in any commercial and industrial activities that benefit the MAIN. The *fatwās*, which are additional religious guidelines for the MAINs administration, provided more specific rulings on the issues related to zakat investment. Our examination of the related *fatwās* found that only four issues pertaining to zakat investment were deliberated and decided. These were the issues on delay of payment, *tamlīk*, excess of zakat and capital assistance. Given the various forms of zakat investment undertaken by the zakat institutions and the amount of zakat involved, the study believes that the above laws should be more explicit and diverse. As a start, the MAINs should take the necessary steps to acquire specific *fatwās* from the *fatwā* committees. A more precise ruling and guideline will help to avoid most of the subsequent problems concerning the legality of conducting any zakat investment project especially among the public. This will inculcate more trust among the public regarding their investment activities.

There is a concern about a possible biasness in the *fatwās* relating to the management of zakat as issued by the states' *fatwā* committee. The impartiality of the *fatwās* is under question based on the fact that the committee are paid by the state and the zakat institutions are also states' organizations. The study suggests that the state pays the

fatwā committee members with funds other than the zakat fund avoiding any future conflict of interest.

The study asserts that the main reason for the lack of transparency of the information regarding zakat investment and the lack of adequate legal rulings and policies on the management of zakat investment is the partial recognition of zakat investment as an alternate zakat distribution mechanism and as a viable investment tool to increase zakat fund. Thus, it is necessary for these institutions to define clearly and correctly the scope of zakat investment in their institutions. The study also finds that the responsibility of the MAINs in managing multiple religious affairs aggravated the problem of transparency further.

The forms of zakat investment at these institutions were found to be extensive. The study finds, however, that the targeted beneficiaries of the projects are concentrated on too few recipients, especially in the development programmes for the poor. Almost all development projects for the *fuqarā'* and *masākīn* were meant for those capable of work and those who showed an ability to generate their own income. The study suggests that investment projects that can generate a stable source of income for those incapable of work are also considered by the institution. Allocation of zakat should be made, for example, for investment in financial assets like unit trusts or shares which can support them financially and will make them independent from zakat in the future. Products of investment may be chosen by the zakat institution or any appointed experts to determine its suitability. The products can be in their names but the zakat institution may also have control over the limits of withdrawal in a period of time.

From the discussions among classical jurists on the types of debt that were allowed by the *Sharī'a*, the study finds that there is a diversity of debts that can be paid with zakat. The study asserts that the zakat institutions can utilize the provision that allowed the use of zakat to pay the debts incurred to help those in need. In this country, it is a known fact that there is an economic disparity between the Muslims and others. Based

on the types of debt that can be paid under the *ghārimūn* group, the zakat institution could borrow external funds for the purpose of avoiding clashes due to the economic disparity and use zakat to pay back the loan. The borrowed funds can be utilized to finance the economic development of Muslim society. Though this type of financing can mitigate the problem of delay in the payment of zakat, the institution must also ensure that its benefits outweigh its costs. External borrowing for public oriented projects would be prudent only if the expected rate of social return from the project financed with the borrowing is higher than the cost of obtaining the resource.

As a modern organization, the study finds that these institutions cannot escape the influences of technological changes in the organization and financing system. The process of financing the investment projects has responded to the organizational changes and contemporary needs resulting in a diversity of interpretations and practices of the *Sharī'a*.

One such change was the advance planning of zakat revenue and expenditures through the budgeting process to ensure the smooth management of the accumulated zakat. This is in contrast to the traditional allocation of zakat where the allocations were made from the collected zakat and disbursed locally at the place of collection. The impact of technological changes—in this case, budgeting—on surpluses of zakat and eventually on zakat investment was eminent. The process of budgeting creates a richer dimension for the meaning of surpluses of zakat. Surpluses of zakat are no longer limited to surpluses after disbursement of zakat revenue to fulfil the recipients' need. The budgeting process creates surpluses after a priori forecast on zakat collection and revenue. This type of surpluses provides an opportunity for the institutions to plan and arrange future investment of zakat. As a result of the budgeting process, there were large amounts of zakat that were undistributed at the institutions. This available zakat became a major source of funds for the institutions to invest in projects that benefit the Muslims in general and the recipients of zakat in particular.

Zakat was also invested in modern financial and banking investments to avoid the excess of zakat being idle in the loft of the *bayt al-māl*. Modern forms of external financing were utilized for projects that involved high amounts of capital and which will be paid back in instalments using future zakat revenue.

The study also asserts that the *maqāṣid al-Sharīʿa* should represent one of the Islamic values that should be considered by those responsible in the distribution and investment of zakat in carrying out their judgments. This is imperative to ensure that decisions made take into account the needs of the modern society and at the same time do not contradict with the established values in Islam. The study recommends the use of a well-defined *maṣlaḥa* doctrine in assisting the policy makers in producing more appropriate *ijtihād* for more effective distribution of zakat via the investment mechanism.

Appendices, List of Acts and Enactments, Glossary, References and List of Interviews

Appendix A

Amount of Collection of Zakat and Its Annual Percentage Growth Rates from 1991-2007 (in RM)

	Year	Wilayah Persekutuan	Pahang	Negeri Sembilan	Melaka
States with Incorporated Collection Institutions	1991	14,639,933	2,805,483	2,784,985	2,757,326
	1992	21,241,218	3,400,397	4,025,375	3,156,121
		45.09	21.21	44.54	14.46
	1993	26,883,510	4,172,442	4,124,069	3,734,463
		26.56	22.70	2.45	18.32
	1994	34,419,920	4,878,610	3,594,483	3,528,613
		28.03	16.92	-12.84	-5.51
	1995	33,681,681	7,161,835	4,827,781	4,528,613
		-2.14	46.80	34.31	28.34
	1996	42,921,790	8,306,977	5,870,265	6,325,940
		27.43	15.99	21.59	39.69
	1997	52,850,927	9,225,865	7,470,136	6,406,012
		23.13	11.06	27.25	1.27
	1998	45,770,559	9,714,169	7,498,203	8,510,860
		-13.40	5.29	0.38	32.86
	1999	36,018,249	9,375,239	8,763,046	8,399,695
		-21.31	-3.49	16.87	-1.31
	2000	58,921,969	14,428,253	10,622,749	11,864,620
		63.59	53.90	21.22	41.25
	2001	72,886,036	16,625,474	16,582,718	13,230,124
		23.70	15.23	56.11	11.51
	2002	84,533,227	18,379,997	16,877,789	15,019,051
		15.98	10.55	1.78	13.52
	2003	96,380,801	20,616,368	16,520,811	13,037,830
		14.02	12.17	-2.12	-13.19
	2004	110,631,584	22,917,724	19,037,286	14,238,493
		14.79	11.16	15.23	9.21
	2005	130,141,210	31,032,234	23,098,181	17,692,094
		17.63	35.41	21.33	24.26
	2006	147,587,898	35,971,734	25,821,205	19,464,653
		13.41	15.92	11.79	10.02
	2007	173,815,155	41,487,156	29,356,272	22,067,022

		17.77	15.33	13.69	13.37
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(cont.)

States with Incorporated Collection and Distribution Institutions	Year	Selangor	Pulau Pinang	Sarawak
1991		7,505,522	2,623,824	1,507,686
1992		10,007,951	3,200,000	1,789,250
		33.34	21.96	18.68
1993		10,292,638	3,839,240	2,224,577
		2.84	19.98	24.33
1994		13,861,337	5,789,027	2,400,000
		34.67	50.79	7.89
1995		13,178,866	4,066,616	2,511,297
		-4.92	-29.75	4.64
1996		27,923,700	7,896,991	3,018,909
		111.88	94.19	20.21
1997		37,213,288	9,716,224	3,907,769
		33.27	23.04	29.44
1998		37,321,669	10,662,531	4,449,241
		0.29	9.74	13.86
1999		37,760,000	10,388,467	4,611,670
		1.17	-2.57	3.65
2000		46,256,873	14,827,875	4,946,077
		22.50	42.73	7.25
2001		61,432,751	17,550,949	8,318,163
		32.81	18.36	68.18
2002		78,724,128	20,101,578	13,808,155
		28.15	14.53	66.00
2003		86,200,315	21,317,975	10,264,513
		9.50	6.05	-25.66
2004		108,826,547	23,288,019	15,566,983
		26.25	9.24	51.66
2005		133,121,829	28,000,426	15,299,300
		22.32	20.24	-1.72
2006		159,836,253	30,589,546	20,548,323
		20.07	9.25	34.31
2007		202,193,541	37,085,282	23,132,987
		26.50	21.24	12.58

(cont.)

State's where Zakat Department or Zakat Units at MAIN Manages Both Collection and Distribution	Year	Terengganu	Johor	Perak	Kedah
	1991	6,567,911	4,584,147	6,705,526	3,332,410
	1992	6,709,844	5,469,568	8,278,245	5,380,601
		2.16	19.31	23.45	61.46
	1993	9,064,993	6,727,618	9,248,372	6,774,155
		35.10	23.00	11.72	25.90
	1994	10,128,839	7,749,688	9,814,064	7,469,211
		11.74	15.19	6.12	10.26
	1995	15,895,318	8,398,475	11,224,838	7,981,568
		56.93	8.37	14.38	6.86
	1996	17,867,214	9,888,358	12,069,152	8,866,859
		12.41	17.74	7.52	11.09
	1997	22,612,834	12,883,924	15,629,554	11,171,432
		26.56	30.29	29.50	25.99
	1998	19,683,595	13,332,036	16,667,827	9,865,453
		-12.95	3.48	6.64	-11.69
	1999	28,591,949	12,499,444	15,695,046	9,533,088
		45.26	-6.25	-5.84	-3.37
	2000	28,030,503	20,757,143	16,355,489	15,674,922
		-1.96	66.06	4.21	64.43
	2001	28,247,343	31,452,923	20,468,421	12,487,629
		0.77	51.53	25.15	-20.33
	2002	32,982,990	29,735,717	20,803,536	18,275,109
		16.76	-5.46	1.64	46.35
	2003	40,058,735	33,959,016	21,698,518	18,559,387
		21.45	14.20	4.30	1.56
	2004	36,147,739	38,052,803	25,724,715	22,205,223
		-9.76	12.06	18.56	19.64
	2005	40,365,591	49,357,154	27,543,535	30,185,661
		11.67	29.71	7.07	35.94
	2006	42,870,576	54,732,942	33,848,479	35,227,090
		6.21	10.89	22.89	16.70
	2007	51,442,342	73,321,841	41,276,180	36,692,724
		19.99	33.96	21.94	4.16

(cont.)

State's where Zakat Department or Zakat Unit at MAIN Manages Both Collection and Distribution	Year	Kelantan	Sabah	Perlis
	1991	2,784,985	1,541,811	910,571
	1992	4,025,375	1,694,483	1,093,840
		44.54	9.90	20.13
	1993	4,124,069	2,031,660	1,504,200
		2.45	19.90	37.52
	1994	3,594,483	2,199,084	1,522,970
		-12.84	8.24	1.25
	1995	4,827,781	2,454,964	1,666,150
		34.31	11.64	9.40
	1996	5,870,266	2,799,108	2,202,193
		21.59	14.02	32.17
	1997	7,470,136	3,203,206	2,604,679
		27.25	14.44	18.28
	1998	7,498,203	2,377,405	3,000,000
		0.38	-25.78	15.18
	1999	8,763,046	2,469,199	3,743,029
		16.87	3.86	24.77
	2000	10,622,749	3,319,594	425,746
		21.22	34.44	-88.63
	2001	16,582,718	5,331,116	3,720,504
		56.11	60.60	773.88
	2002	16,877,789	6,183,540	6,157,050
		1.78	15.99	65.49
	2003	18,140,372	5,102,537	6,573,225
		7.48	-17.48	6.76
	2004	22,440,931	7,784,938	6,406,109
		23.71	52.57	-2.54
	2005	29,372,551	11,314,074	6,564,465
		30.89	45.33	2.47
	2006	35,641,538	16,648,794	11,847,142
		21.34	47.15	80.47
	2007	49,199,887	17,514,983	16,699,600
		38.04	5.20	40.96

Source: PPZ, *Laporan Zakat*, various years.

Notes: The shadowed areas are the years that the zakat institutions at these state have been incorporated. Numbers in *italics* are annual percentage increase of collection.

Appendix B

Collection and Distribution of Zakat: Total, Annual Percentage Growth, Percentage of Distribution from Collection and Differences between Collection and Distribution for all States in Malaysia from 2004-2008

States with Incorporated Zakat Collection and Distribution Institutions	State	Year	Total Collection (RM)	Annual Percentage Growth of Collection	Total Distribution (RM)	Annual Percentage Growth of Distribution	Percentage of Distribution from Collection	Differences between Collection and Distribution (RM)
	Selangor	2004	108,826,547	26.1	100,937,028	18.4	92.8	7,889,519
		2005	133,121,829	22.4	114,170,658	13.1	85.8	18,951,171
		2006	159,836,253	20.0	146,905,517	28.7	91.9	12,930,736
		2007	202,193,541	26.4	176,979,357	20.5	87.5	25,214,184
		2008	244,409,628	20.9	188,998,711	6.8	77.3	55,410,917
	Penang	2004	23,288,019	9.2	20,577,660	33.6	88.4	2,710,359
		2005	28,000,426	20.2	21,340,846	3.7	76.2	6,659,580
		2006	30,589,546	9.2	26,253,904	23.0	85.8	4,335,641
		2007	37,085,282	21.2	30,014,843	14.3	80.9	7,070,439
		2008	41,764,273	12.6	45,602,321	51.9	109.2	-3,838,048
	Sarawak	2004	15,566,983	51.7	4,625,700		29.7	10,941,282
		2005	15,299,300	-1.7	6,540,236	41.4	42.7	8,759,064
		2006	20,548,323	34.3	8,051,104	23.1	39.2	12,497,219
		2007	23,132,089	12.6	20,303,794	152.2	87.8	2,828,295
		2008	36,099,969	56.1	18,077,692	-11.0	50.1	18,022,277

(cont.)

States with Incorporated Zakat Collection Institutions	State	Year	Total Collection (RM)	Annual Percentage Growth of Collection	Total Distribution (RM)	Annual Percentage Growth of Distribution	Percentage of Distribution from Collection	Differences (RM)
	Wilayah Persekutuan	2004	110,631,584	14.8	56,606,956	0.4	51.2	54,024,628
		2005	130,141,210	17.6	99,519,005	75.8	76.5	30,622,205
		2006	147,587,898	13.4	101,548,407	2.0	68.8	46,039,491
		2007	173,815,154	17.8	121,224,318	19.4	69.7	52,590,836
		2008	211,364,698	21.6	167,507,848	38.2	79.3	43,856,850
	Negeri Sembilan	2004	19,037,286	15.2	15,273,598	-13.0	80.2	3,763,688
		2005	23,098,181	21.3	22,254,228	45.7	96.3	843,953
		2006	25,821,205	11.8	24,721,038	11.1	95.7	1,100,168
		2007	29,356,272	13.7	31,192,172	26.2	106.3	-1,835,900
		2008	37,409,710	27.4	36,818,211	18.0	98.4	591,499
	Pahang	2004	22,917,724	11.2				
		2005	31,032,234	35.4	13,696,292		44.1	17,335,942
		2006	35,971,734	15.9	19,376,074	41.5	53.9	16,595,660
		2007	41,487,156	15.3	21,317,696	10.0	51.4	20,169,460
		2008	57,935,147	39.6	22,227,762	4.3	38.4	35,707,385
	Melaka	2004	14,238,493	9.2	12,713,839		89.3	1,524,654
		2005	17,692,094	24.3	13,821,996	8.7	78.1	3,870,098
		2006	19,464,653	10.0	18,162,092	31.4	93.3	1,302,561
		2007	22,067,022	13.4	17,906,956	-1.4	81.1	4,160,066
		2008	26,905,924	21.9	20,723,736	15.7	77.0	6,182,188

(cont.)

State's Zakat Department or Zakat Units at MAIN which Manages Both Collection and Distribution of Zakat	State	Year	Total Collection (RM)	Annual Percentage Growth of Collection	Total Distribution (RM)	Annual Percentage Growth of Distribution	Percentage of Distribution From Collection	Differences (RM)
	Kedah	2004	22,205,223	19.6	19,784,654	2.1	89.1	2,420,569
		2005	30,185,661	35.9	23,826,748	20.4	78.9	6,358,914
		2006	35,227,090	16.7	27,449,471	15.2	77.9	7,777,619
		2007	36,692,724	4.2	36,062,046	31.4	98.3	630,678
		2008	53,202,300	45.0	42,133,197	16.8	79.2	11,069,103
	Kelantan	2004	22,440,931	23.7	16,563,281	8.2	73.8	5,877,650
		2005	29,372,551	30.9	20,207,372	22.0	68.8	9,165,180
		2006	35,641,538	21.3	21,742,633	7.6	61.0	13,898,905
		2007	40,199,887	38.0	24,313,030	11.8	60.5	15,886,857
		2008	58,167,095	18.2	25,302,009	4.1	43.5	32,865,086
	Terengganu	2004	36,147,739	-9.8	38,096,418	14.9	105.4	-1,948,679
		2005	40,365,591	11.7	33,295,110	-12.6	82.5	7,070,481
		2006	42,870,576	6.2	28,695,240	-13.8	66.9	14,175,337
		2007	51,442,342	20.0	31,759,422	10.7	61.7	19,682,920
		2008	66,200,415	28.7	35,808,597	12.7	54.1	30,391,818
	Perak	2004	25,724,715	18.6	20,020,133		77.8	5,704,582
		2005	27,543,535	7.1				
		2006	33,848,479	22.9	24,518,927		72.4	9,329,553
		2007	41,276,180	21.9	30,866,754	25.9	74.8	10,409,426
		2008	57,129,485	38.4	36,641,668	18.7	64.1	20,487,817

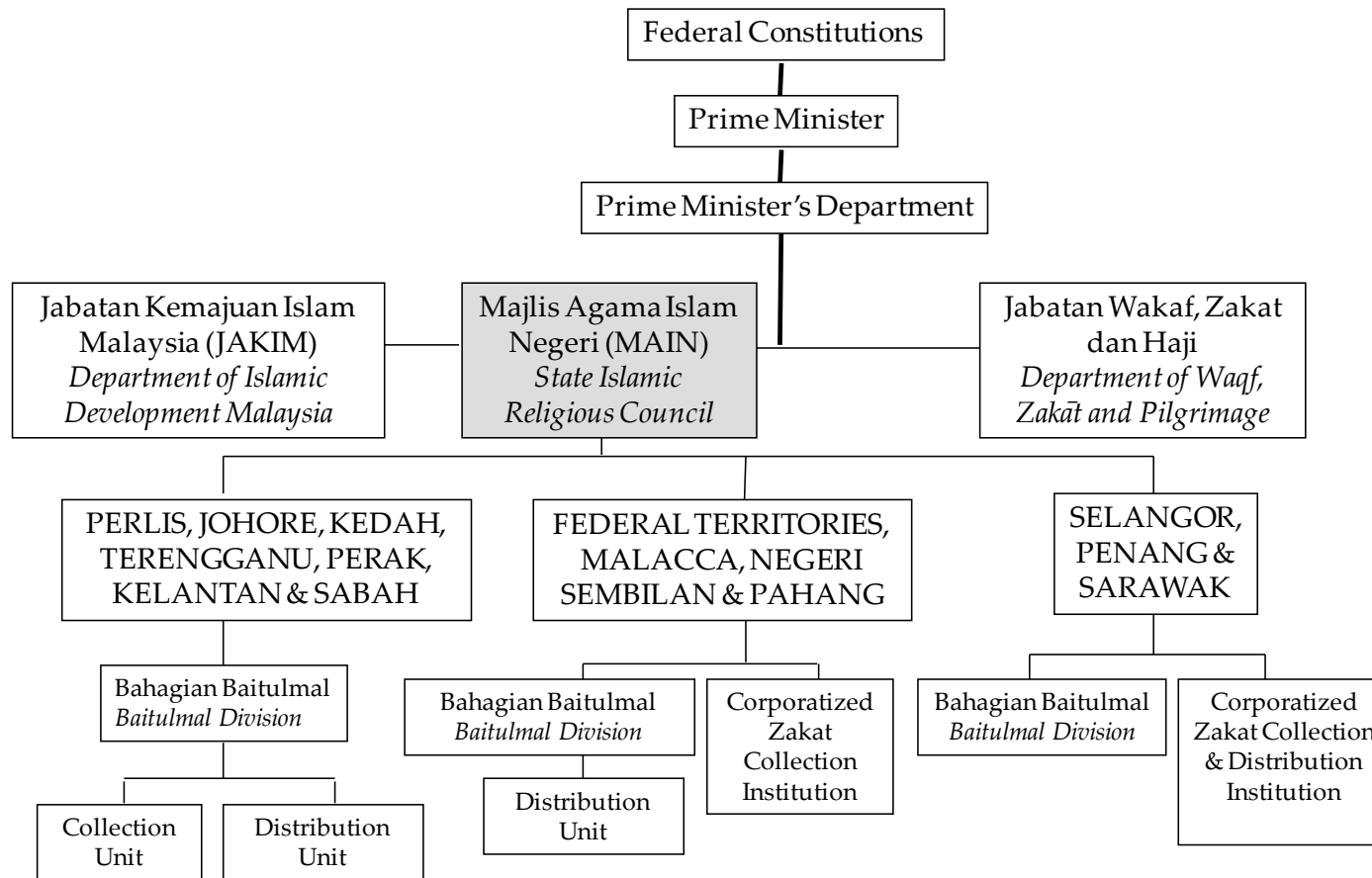
(cont.)

State's Zakat Department or Zakat Unit at MAIN which Manages Both Collection and Distribution of Zakat (cont'd)	State	Year	Total Collection (RM)	Annual Percentage Growth of Collection	Total Distribution (RM)	Annual Percentage Growth of Distribution	Percentage of Distribution from Collection	Differences (RM)
	Johor	2004	38,052,803	12.1	27,554,780		72.4	10,498,022
		2005	49,357,154	29.7				
		2006	54,732,942	10.9	43,407,349		79.3	11,325,593
		2007	73,321,841	34.0	64,822,120	49.3	88.4	8,499,721
		2008	100,737,540	37.4	74,296,450	14.6	73.8	26,441,090
	Perlis	2004	6,406,109	-2.5	5,356,243		83.6	1,049,866
		2005	6,564,465	2.5				
		2006	11,847,142	80.5	6,802,350		57.4	5,044,792
		2007	16,699,600	41.0	11,597,569	70.5	69.4	5,102,031
		2008	23,134,583	38.5	15,852,621	36.7	68.5	7,281,962
	Sabah	2004	7,784,938	52.6	4,900,207		62.9	2,884,731
		2005	11,314,074	45.3				
		2006	16,648,794	47.2	12,219,805		73.4	4,428,989
		2007	17,514,983	5.2	18,826,422	54.1	107.5	-1,311,439
		2008	23,799,155	35.9	19,377,447	2.9	81.4	4,421,708

Sources: PPZ, *Laporan Zakat*, various years.

Appendix C

Administration of Zakat in Malaysia



Source: Pusat Pungutan Zakat MAIWP, *Laporan Tahunan 2007*, 96 (with slight modifications).

Appendix D
Collection of Zakat: Types of Collection and Total for all States in Malaysia
from 2004-2008

States with Incorporated Zakat Collection and Distribution Institutions	States	Year	Zakat on Wealth		<i>Zaka' al-Fiṭr</i>		Total Collection (RM)
			(RM)	%	(RM)	%	
	Selangor	2004	98,734,674	91.7	9,085,932	8.3	107,820,606
		2005	123,818,131	93.0	9,338,255	7.0	133,156,386
		2006	150,037,698	93.8	9,896,315	6.2	159,934,013
		2007	190,534,968	94.3	11,554,176	5.7	202,089,144
		2008	232,132,869	95.0	12,276,759	5.0	244,409,628
	Penang	2004	20,886,653	89.7	2,401,366	10.3	23,288,019
		2005	25,559,617	91.3	2,440,809	8.7	28,000,426
		2006	28,065,599	91.7	2,523,947	8.3	30,589,546
		2007	34,396,477	92.7	2,778,805	7.5	37,085,282
		2008	37,815,031	90.5	3,949,242	9.5	41,764,273
	Sarawak	2004	12,804,734	82.3	2,762,249	17.7	15,566,983
		2005	12,486,438	81.6	2,812,862	18.4	15,299,300
		2006	17,749,106	86.4	2,799,217	13.6	20,548,323
		2007	20,124,918	87.0	3,007,170	13.0	23,132,987
		2008	31,934,747	88.5	4,165,223	11.5	36,099,969

(cont.)

States with Incorporated Zakat Collection Institutions	States	Year	Zakat on Wealth		<i>Zaka' al-Fiṭr</i>		Total Collection (RM)
			(RM)	%	(RM)	%	
	Wilayah Persekutuan	2004	106,747,113	96.5	3,884,471	3.5	110,631,584
		2005	126,746,030	97.4	3,395,182	2.6	130,141,210
		2006	143,304,403	97.1	4,283,495	2.9	147,587,898
		2007	169,217,234	97.4	4,597,921	2.6	173,815,154
		2008	206,261,147	97.6	5,103,550	2.4	211,364,698
	Negeri Sembilan	2004	16,500,007	86.7	2,537,279	13.3	19,037,286
		2005	20,493,434	88.7	2,604,747	11.3	23,098,181
		2006	23,155,042	89.7	2,666,164	10.3	25,821,205
		2007	26,572,082	90.5	2,784,190	9.5	29,356,272
		2008	33,797,056	90.3	3,612,654	9.7	37,409,711
	Pahang	2004	18,887,380	82.4	4,030,344	17.6	22,917,724
		2005	26,991,593	87.0	4,040,641	13.0	31,032,234
		2006	31,721,734	88.2	4,250,000	11.8	35,971,734
		2007	37,217,905	89.7	4,269,251	10.3	41,487,156
		2008	50,636,614	87.4	7,298,533	12.6	57,935,147
	Melaka	2004	12,271,426	86.2	1,967,067	13.8	14,238,493
		2005	15,695,466	88.7	1,996,628	11.3	17,692,094
		2006	17,314,704	89.0	2,149,949	11.0	19,464,653
		2007	19,878,063	90.1	2,188,959	9.9	22,067,022
		2008	23,970,865	89.1	2,935,069	10.9	26,905,924

(cont.)

State's where Zakat Department or Zakat Unit at MAIN Manages Both Collection and Distribution	States	Year	Zakat onWealth		Zaka' al-Fiṭr		Total Collection (RM)
			(RM)	%	(RM)	%	
	Kedah	2004	21,871,483	98.5	333,740	1.5	22,205,223
		2005	29,761,051	98.6	424,610	1.4	30,185,661
		2006	34,727,670	98.6	499,420	1.4	35,227,090
		2007	34,964,789	95.3	1,727,935	4.7	36,692,724
		2008	50,151,323	93.0	8,015,772	7.0	58,167,095
	Kelantan	2004	18,200,043	81.1	424,088	1.9	22,440,931
		2005	24,641,490	83.9	4,731,061	16.1	29,372,551
		2006	30,727,316	86.2	4,914,221	13.8	35,641,538
		2007	35,180,151	71.5	5,019,735	10.2	49,199,887
		2008	49,455,256	86.2	3,747,044	13.8	53,202,300
	Terengganu	2004	31,946,907	88.4	4,200,832	11.6	36,147,739
		2005	36,301,166	89.9	4,064,425	10.1	40,365,591
		2006	38,936,752	90.8	3,933,824	9.2	42,870,576
		2007	47,494,929	92.3	3,947,413	7.7	51,442,342
		2008	60,749,136	91.8	5,451,279	8.2	66,200,415
	Perak	2004	20,909,283	81.3	4,815,433	18.7	25,724,715
		2005	22,680,409	82.3	4,863,127	17.7	27,543,535
		2006	28,933,330	85.5	4,915,149	14.5	33,848,479
		2007	35,786,691	86.7	5,489,489	13.3	41,276,180
		2008	49,416,129	86.5	7,713,356	13.5	57,129,485
	Johor	2004	29,975,457	78.8	8,077,345	21.2	38,052,803
		2005	41,166,136	83.4	8,191,018	16.6	49,357,154
		2006	46,478,288	84.9	8,254,655	15.1	54,732,942
		2007	64,538,051	88.0	8,783,790	12.0	73,321,841
		2008	89,181,248	88.5	11,556,292	11.5	100,737,540
	Perlis	2004	5,824,254	90.9	581,855	9.1	6,406,109
		2005	5,837,158	88.9	727,308	11.1	6,564,465
		2006	11,052,393	93.3	794,748	6.7	11,847,142
		2007	15,894,119	95.2	805,481	4.8	16,699,600
		2008	22,302,601	96.4	831,982	3.6	23134583

(cont.)

	Sabah	2004	3,535,399	45.4	4,249,539	54.6	7,784,938
		2005	7,060,359	62.4	4,253,715	37.6	11,314,074
		2006	12,073,069	72.5	4,575,725	27.5	16,648,794
		2007	12,479,780	71.3	5,035,202	28.7	17,514,983
		2008	16,420,053	69.0	7,379,103	31.0	23,799,155

Sources: PPZ MAIWP, *Laporan Zakat*, various years.

Appendix E
Distribution of Zakat Based on Groups of Recipients for all States in Malaysia from 2004-2008
(in RM and number in bracket is the percentage from total)

States	States with Incorporated Zakat Collection and Distribution Institutions									
	Year	<i>Fuqara'</i>	<i>Masākīn</i>	<i>‘Amilūn</i>	<i>Mu'allafat Qulūbuhum</i>	<i>Riqāb</i>	<i>Ghārimūn</i>	<i>Ibn al-Sabīl</i>	<i>Fī Sabīl li Allā</i>	Total
Selangor	2004	2,157,081	30,996,140	12,043,444	5,543,954	355,711	4,095,302	379,115	45,348,281	100,937,028
		(2.1)	(30.7)	(11.9)	(5.5)	(0.4)	(4.1)	(0.4)	(44.9)	(100.0)
	2005	2,706,857	41,265,978	16,916,679	6,447,002	116,521	7,508,957	374,978	38,833,685	114,170,658
		(2.4)	(36.1)	(14.8)	(5.6)	(0.1)	(6.6)	(0.3)	(34.0)	(100.0)
	2006	2,589,451	38,524,997	19,739,056	7,650,887	683,428	9,999,254	445,736	66,915,368	146,905,517
		(1.8)	(26.2)	(13.4)	(5.2)	(0.5)	(6.8)	(0.3)	(45.5)	(100.0)
	2007	2,092,059	54,035,751	27,397,192	8,728,584	953,888	17,130,226	428,568	66,201,541	176,979,357
		(1.2)	(30.5)	(15.5)	(4.9)	(0.5)	(9.7)	(0.2)	(37.4)	(100.0)
	2008	11,394,204	51,174,191	30,396,961	11,672,356	1,089,512	18,976,522	699,808	63,595,217	188,998,711
		(6.0)	(27.1)	(16.1)	(6.2)	(0.6)	(10.0)	(0.4)	(33.6)	(100.0)
Penang	2004	1,044,644	7,037,868	2,805,210	451,087		2,173,211	93,554	6,972,086	20,577,660
		(5.1)	(34.2)	(13.6)	(2.2)		(10.6)	(0.5)	(33.9)	(100.0)
	2005	1,272,069	6,809,117	3,321,587	419,677		936,949	118,097	8,433,283	21,340,846
		(6.0)	(31.9)	(15.6)	(2.0)		(4.4)	(0.6)	(39.5)	(100.0)
	2006	1,596,145	10,137,081	3,905,955	539,895		828,624	147,390	9,098,813	26,253,904
		(6.1)	(38.6)	(14.9)	(2.1)		(3.2)	(0.6)	(34.7)	(100.0)
	2007	1,511,693	13,614,506	3,240,316	577,338		813,786	153,081	10,104,843	30,014,843
		(5.0)	(45.4)	(10.8)	(1.9)		(2.7)	(0.5)	(33.7)	(100.0)
	2008	2,191,213	20,319,713	5,450,034	758,404		1,021,700	137,063	15,724,194	45,602,321
		(4.8)	(44.6)	(12.0)	(1.7)		(2.2)	(0.3)	(34.5)	(100.0)

(cont.)

Sarawak	2004		1,817,742	2,168,539	62,626			3,499	57,3296	4,625,700
			(39.3)	(46.9)	(1.4)			(0.1)	(12.4)	(100.0)
	2005		3,129,709	2,297,329	103,283			4,851	1,005,064	6,540,236
			(47.9)	(35.1)	(1.6)			(0.1)	(15.4)	(100.0)
	2006		4,240,376	2,450,517	88,241			3,289	1,268,680	8,051,104
			(52.7)	(30.4)	(1.1)			(**)	(15.8)	(100.0)
	2007	3571474	2,012,249	3,021,744	75,059		7,928	2,137	11,613,203	20,303,794
		(17.6)	(9.9)	(14.9)	(0.4)		(**)	(**)	(57.2)	(100.0)
	2008	4,867,737	1,918,318	3,708,615	133,696		11,190	16,050	6,687,597	18,077,692
		(26.9)	(10.6)	(20.5)	(0.7)		(0.1)	(0.1)	(37.0)	(100.0)

(cont.)

States	States with Incorporated Zakat Collection Institutions									
	Year	<i>Fuqara'</i>	<i>Masaḳīn</i>	<i>ʿAmilūn</i>	<i>Mu'allafat Qulūbuhum</i>	<i>Riqāb</i>	<i>Ghaṛimūn</i>	<i>Ibn al-Sabīl</i>	<i>Fī Sabīl li Allā</i>	Total
Wilayah Persekutuan	2004	11,419,593	11,605,609	15,721,920	1,806,614	2,000	507,192	139,287	15,404,741	56,606,956
		(20.2)	(20.5)	(27.8)	(3.2)	(**)	(0.9)	(0.2)	(27.2)	(100.0)
	2005	11,179,369	13,470,528	16,800,093	2,209,417		610,837	168,412	55,080,351	99,519,005
		(11.2)	(13.5)	(16.9)	(2.2)		(0.6)	(0.2)	(55.3)	(100.0)
	2006	14,837,415	13,463,592	25,685,080	3,125,683		1,399,151	340,074	42,696,782	101,547,777
		(14.6)	(13.3)	(25.3)	(3.1)		(1.4)	(0.3)	(42.0)	(100.0)
	2007	19,363,534	20,675,006	16,249,998	3,796,132		1,395,073	382,982	59,361,593	121,224,319
		(16.0)	(17.1)	(13.4)	(3.1)		(1.2)	(0.3)	(49.0)	(100.0)
	2008	20,506,789	22,616,746	31,643,535	5,652,879		1,652,908	399,644	85,035,346	167,507,848
		(12.2)	(13.5)	(18.9)	(3.4)		(1.0)	(0.2)	(50.8)	(100.0)
Negeri Sembilan	2004	3,708,203		1,589,270	1,355,862	4,423,543	282,240	187,764	3,726,716	15,273,598
		(24.3)		(10.4)	(8.9)	(29.0)	(1.8)	(1.2)	(24.4)	(100.0)
	2005	5,613,956		2,447,108	1,256,475	8,573,162	411,519	170,432	3,781,576	22,254,228
		(25.2)		(11.0)	(5.6)	(38.5)	(1.8)	(0.8)	(17.0)	(100.0)
	2006	7,250,818		2,894,818	1,474,500	7,010,327	700,445	285,715	5,104,415	24,721,038
		(29.3)		(11.7)	(6.0)	(28.4)	(2.8)	(1.2)	(20.6)	(100.0)
	2007	10,697,360		3,340,913	1,995,800	8,256,140	1,074,183	237,131	5,590,644	31,192,172
		(34.3)		(10.7)	(6.4)	(26.5)	(3.4)	(0.8)	(17.9)	(100.0)
	2008	12,240,024		4,676,561	2,671,141	9,533,391	1,368,274	274,407	6,054,414	36,818,211
		(33.2)		(12.7)	(7.3)	(25.9)	(3.7)	(0.7)	(16.4)	(100.0)

(cont.)

Pahang	2004									
	2005	1,808,538	1,926,438	2,429,333	1,049,741			181,139	6,301,203	13,696,292
		(13.2)	(14.1)	(17.7)	(7.7)			(1.3)	(46.0)	(100.0)
	2006	3,538,318	2,704,270	3,022,500	1,457,440			261,007	8,392,540	19,376,074
		(18.3)	(14.0)	(15.6)	(7.5)			(1.3)	(43.3)	(100.0)
	2007	4,642,000	2,099,051	2,495,687	1,716,898			233,999	10,140,061	21,317,696
		(21.8)	(9.8)	(11.7)	(8.1)			(1.1)	(47.6)	(100.0)
	2008	3,395,974	5,211,227	2,484,981	2,207,483			180,232	8,747,865	22,227,762
		(15.3)	(23.4)	(11.2)	(9.9)			(0.8)	(39.4)	(100.0)
Malacca	2004	2,675,376	692,911	2,371,722	690,766			1,914	6,281,149	12,713,839
		(21.0)	(5.5)	(18.7)	(5.4)			(**)	(49.4)	(100.0)
	2005	2,928,843	686,942	3,021,607	662,604		520	2,041	6,519,440	13,821,996
		(21.2)	(5.0)	(21.9)	(4.8)		(**)	(0.0)	(47.2)	(100.0)
	2006	3,862,743	2,236,872	3,818,060	793,120			3,884	7,447,413	18,162,092
		(21.3)	(12.3)	(21.0)	(4.4)			(0.0)	(41.0)	(100.0)
	2007	3,881,149	821,164	3,601,773	972,401		4,690	3,757	8,622,021	17,906,956
		(21.7)	(4.6)	(20.1)	(5.4)		(**)	(**)	(48.1)	(100.0)
	2008	6,211,318	1,174,219	4,245,648	1,420,559		12,266	6,252	7,635,473	20,723,736
		30.0	5.7	20.5	6.9			(**)	36.8	99.9

(cont.)

State's where Zakat Department or Zakat Units at the MAIN Manages Both Collection and Distribution										
States	Year	<i>Fuqarā'</i>	<i>Masākīn</i>	<i>ʿĀmilūn</i>	<i>Mu'allafat Qulubuhum</i>	<i>Riqāb</i>	<i>Ghārimūn</i>	<i>Ibn al-Sabīl</i>	<i>Fī Sabīl li Allā</i>	Total
Kedah	2004	893,554	10,346,588	2,226,181	567,128		12,396	309,440	5,429,366	19,784,654
		(4.5)	(52.3)	(11.3)	(2.9)		(0.1)	(1.6)	(27.4)	(100.0)
	2005	874,185	11,787,488	2,594,815	847,040		8,132	465,448	7,249,640	23,826,748
		(3.7)	(49.5)	(10.9)	(3.6)		(0.0)	(2.0)	(30.4)	(100.0)
	2006	1,310,800	14,442,631	2,735,431	867,378		9,750	380,205	7,720,908	27,467,103
		(4.8)	(52.6)	(10.0)	(3.2)		(**)	(1.4)	(28.1)	(100.0)
	2007	1,318,900	15,991,747	5,315,198	821,330		18,389	223,070	9,953,934	33,687,068
		(3.9)	(47.5)	(15.8)	(2.4)		(0.1)	(0.7)	(29.5)	(100.0)
	2008	1,845,000	17,621,174	5,841,193	1,013,091		2,100	223,843	15,586,796	42,133,197
		(4.4)	(41.8)	(13.9)	(2.4)		(**)	(0.5)	(37.0)	(100.0)
Kelantan	2004	8,113,445		1,285,098	339,918		19,983	5,320	6,799,518	16,563,281
		(49.0)		(7.8)	(2.1)		(0.1)	(**)	(41.1)	(100.0)
	2005	11,657,660		1,320,926	365,843		20,683	5,320	6,836,940	20,207,372
		(57.7)		(6.5)	(1.8)		(0.1)	(**)	(33.8)	(100.0)
	2006	12,241,405		2,962,685	505,423		19,950	8,760	6,004,409	21,742,633
		(56.3)		(13.6)	(2.3)		(0.1)	(**)	(27.6)	(100.0)
	2007	14,341,036		3,544,325	708,875		8,900	1,550	5,708,344	24,313,030
		(59.0)		(14.6)	(2.9)		(**)	(**)	(23.5)	(100.0)
	2008	9,560,490		10,114,019	1,780,673	788,781		12,400	3,470	1,318,260
		(37.8)		(40.0)	(7.0)	(3.1)		(**)	(**)	(5.2)

(cont.)

Terengganu	2004	1,569,150	16,728,805	1,663,218	537,609	2,030,000	23,254	1,720	10,267,624	38,096,418
		(4.1)	(43.9)	(4.4)	(1.4)	(5.3)	(0.1)	(**)	(27.0)	(86.2*)
	2005	393,509	16,658,676	1,080,014	850,214	4,336,118	21,660	3,757	4,708,618	28,052,565
		(1.4)	(59.4)	(3.8)	(3.0)	(15.5)	(0.1)	(**)	(16.8)	(100.0)
	2006	2,636,444	17,404,473	2,660,272	757,735	180,500	22,512	4,040	5,029,264	28,695,240
		(9.2)	(60.7)	(9.3)	(2.6)	(0.6)	(0.1)	(**)	(17.5)	(100.0)
	2007	2,537,374	17,578,805	4,347,327	1,736,320	58,535	35,138	9,055	5,456,867	31,759,422
		(8.0)	(55.3)	(13.7)	(5.5)	(0.2)	(0.1)	(**)	(17.2)	(100.0)
	2008	3,240,742	13,543,600	9,418,486	1,053,405	145,767	68,013	13,100	8,325,484	35,808,597
		(9.1)	(37.8)	(26.3)	(2.9)	(0.4)	(0.2)	(**)	(23.2)	(100.0)
Perak	2004	7,697,212		3,210,789	1,167,134		540,913	260,020	7,144,065	20,020,133
		(38.4)		(16.0)	(5.8)		(2.7)	(1.3)	(35.7)	(100.0)
	2005	9,855,552		3,106,978	1,392,319		802,350	364,027	6,742,979	21,542,089
		(45.8)		(14.4)	(6.5)		(0.4)	(1.7)	(31.3)	(100.0)
	2006	11,309,463		3,752,940	1,686,195		82,546	430,249	7,257,534	24,518,927
		(46.1)		(15.3)	(6.9)		(0.3)	(1.8)	(29.6)	(100.0)
	2007	14,460,816.0		6,961,473.0	1,496,090.0		96,788.0	706,022	7,145,565	30,866,754
		(46.8)		(22.6)	(4.8)		(0.3)	(2.3)	(23.1)	(100.0)
	2008	19,191,831		6,404,152	1,382,977		130,996	460,605	9,071,108	36,641,668
		(52.4)		(17.5)	(3.8)		(0.4)	(1.3)	(24.8)	(100.0)

(cont.)

Johor	2004	7,893,353	6,668,844	2,618,965		163,288	78,473	10,131,858	27,554,780
		(28.6)	(24.2)	(9.5)		(0.6)	(0.3)	(36.8)	(100.0)
	2005	14,058,587	8,052,573	2,679,346		285,636	137,492	12,258,459	37,472,093
		(37.5)	(21.5)	(7.2)		(0.8)	(0.4)	(32.7)	(100.0)
	2006	16,159,407.0	8,381,097.1	3,865,471.2		275,863.1	163,441	14,562,070	43,407,349
		(37.2)	(19.3)	(8.9)		(0.6)	(0.4)	(33.5)	(100.0)
	2007	5,169,931	14,533,647	10,477,017	4,553,108	501,592	47,499	29,539,327	29,539,327
		(8.0)	(22.4)	(16.2)	(7.0)	(0.8)	(0.1)	45.6	(45.6)
Perlis	2008	6,683,774	16,805,502	11,374,905	5,432,617	1,794,993	133,066	32,071,593	74,296,450
		(9.0)	(22.6)	(15.3)	(7.3)	(2.4)	(0.2)	(43.2)	(100.0)
	2004	318,916	1,008,098	933,281	162,889		1,348	2,931,711	5,356,243
		(6.0)	(18.8)	(17.4)	(3.0)		(**)	(54.7)	(100.0)
	2005								
	2006	364,952	1,598,919	1,130,465	171,338		8,772	3,537,904	6,802,350
		(5.4)	(23.5)	(16.6)	(2.5)		(0.1)	(52.0)	(100.0)
	2007	454,398	2,233,408	1,449,656	185,989		3,265	7,270,853	11,597,569
		(3.9)	(19.3)	(12.5)	(1.6)		(**)	(62.7)	(100.0)
	2008	842,370	4,083,220	1,381,240	183,946	5,000	4,910	9,351,935	15,852,621
		(5.3)	(25.8)	(8.7)	(1.2)	(**)	(**)	(59.0)	(100.0)

(cont.)

Sabah	2004	1,403,160	1,747,819	617,911	77,090		9,700	1,000	1,043,528
		(28.6)	(35.7)	(12.6)	(1.6)		(0.2)	(**)	(21.3)
	2005	2,807,514	2,216,517	1,338,749	208,105		18,275	11,553	2,385,309
		(31.2)	(24.7)	(14.9)	(2.3)		(0.2)	(0.1)	(26.5)
	2006	3,592,094	2,365,462	2,237,191	675,725		33,590	7,504	3,308,241
		(29.4)	(19.4)	(18.3)	(5.5)		(0.3)	(0.1)	(27.1)
	2007	6,342,680	4,655,469	1,489,134	943,210		5,414	5,390,516	18,826,422
		(33.7)	(24.7)	(7.9)	(5.0)		(**)	(28.6)	(100.0)
	2008	6,583,990	4,597,360	2,473,516	1,528,010	410	20,077	4,174,083	19,377,447
		(34.0)	(23.7)	(12.8)	(7.9)	(**)	(0.1)	(21.5)	(100.0)

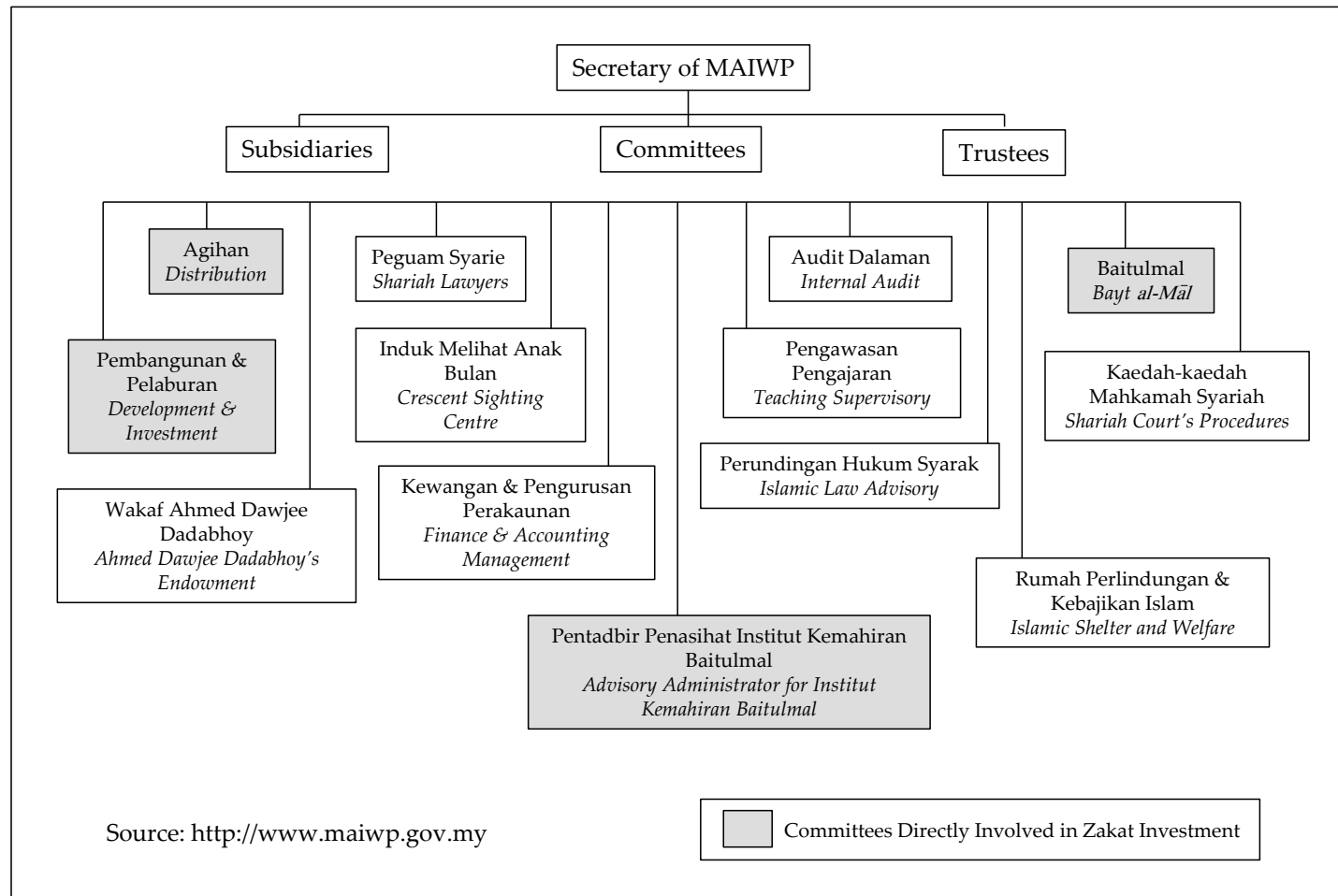
Sources: PPZ, *Laporan Zakat*, various years. The percentages are calculated by the researcher.

Note (*): The figure does not round up to 100 percent due to an amount of zakat which is distributed under 'direct distribution' and not included in any of the groups mentioned.

(**): Less than 0.1 percent.

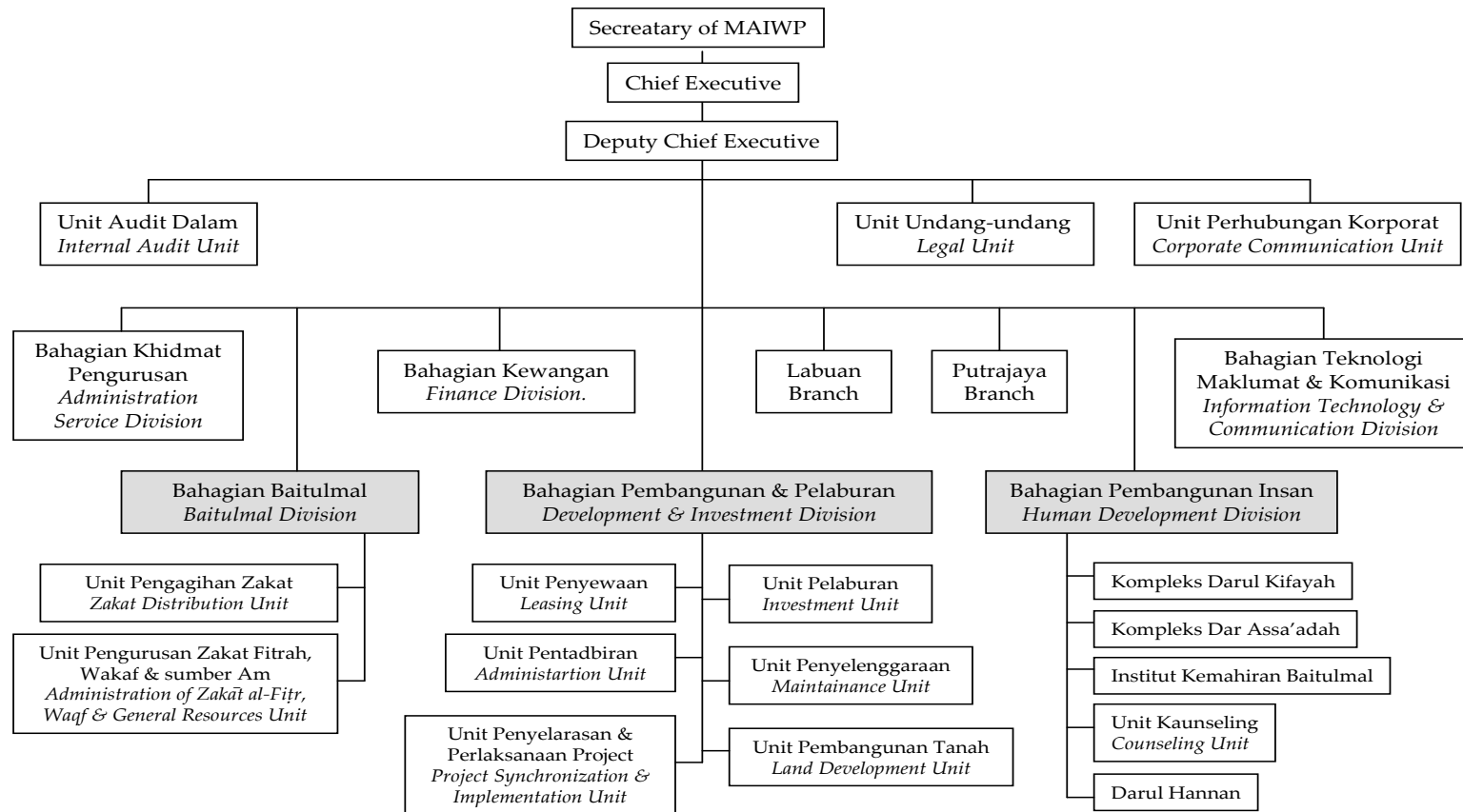
Appendix F (i)

Majlis Agama Islam Wilayah Persekutuan: The Committees (Policy Makers)




Appendix F (ii)

Majlis Agama Islam Wilayah Persekutuan: The Departments (The Executives)



Source: MAIWP, *Buletin MAIWP*, 2008: 1, 6.

 Divisions Directly Involved in the Management of Zakāt Investment

Appendix F (iii)

Majlis Agama Islam Wilayah Persekutuan: Investments and Revenues from 2005-2008 (in RM)

Excerpts from Balance Sheet	Year			
	2005	2006	2007	2008
Investment certificates	114,647,802	115,193,812	141,419,097	234,804,015
At licensed Islamic Banking Institutions	32,481,496	32,765,295	58,269,723	151,454,895
Other banks	70,929,733	68,320,943	68,670,049	71,286,107
Time deposit	11,236,573	14,107,574	14,479,325	12,063,013
Ar-Rahnu Scheme	10,000,000	10,000,000	10,000,000	10,000,000
Cash in Bank	301,669,263	235,337,624	264,868,605	147,954,758
Investment in shares	7,005,354	8,601,411	5,603,060	5,248,384
Investment in subsidiaries	13,660,000	14,660,000	14,660,000	16,660,000

Excerpts from Income Statement	Year			
	2005	2006	2007	2008
Rents	5,566,901	5,471,352	7,324,572	7,821,573
Profits from Investment certificates	4,151,812	4,156,330	4,921,255	6,372,764
Profits from Current Accounts	611,278	2,680,313	4,020,846	4,176,643
Royalties	-	118,112	206,954	200,318
Receipts from Liquidation of Subsidiaries	-	-	1,280,395	-
Share Dividends from Subsidiaries	-	-	127,750	194,250
Dividends	13,339	5,906	1,381	22,961

Source: From the balance sheet and income statement of MAIWP in MAIWP, *Laporan Tahunan*, various years.

Appendix F(iv)

Majlis Agama Islam Wilayah Persekutuan: Recipients and Types of Zakat Assistance

Distribution Purposes	Recipients	Types of Zakat Assistance	
Consumption & Fulfillment of Basic Needs	All of the recipients ^a	Instant Monetary Assistance Monthly Financial Assistance Health Treatment Assistance Disabled Vehicle Deposits Assistance Home Purchase/ Construction/Repair	Marriage Assistance Schooling Assistance Home Rentals Shari'ah Legal Assistance
Functional ^b	Riqāb ^a	Emergency Assistance	
	Ghārimūn ^a	Debt Settlement	
	Ibn al-Sabīl ^a	Fee for Local Transport or Abroad	
Investment	Faqīr and Miskīn	Business Capital Assistance Taxi Hire & Purchase Deposits Assistance Farming Assistance Scholarships	
	M'uallaf Qulūbuhum	Scholarships	
	Fī Sabīl li Allāh	Scholarships Management of Shelters under MAIWP Other Welfare Agencies	

Note: a. The recipients' income must be below the *ḥadd al-kifāya* to be eligible for the assistance.

b. The *ʿāmilūn* do not receive zakāt assistance but are given a portion of the distribution in form of salaries, fees and allowances.

Source: <http://www.maiwp.gov.my>

Appendix F (v)

Majlis Agama Islam Wilayah Persekutuan: Prerequisites for Applications for Business Capital and Cab Hire and Purchase Deposit Assistance

Types of Assisatance	General Prerequisites	Specific Prerequisites
Business Capital Assistance	<ul style="list-style-type: none"> ▪ Muslim ▪ Malaysian ▪ Residing in Wilayah Persekutuan not less than a year. ▪ Under the <i>ḥadd al-kifāya</i> 	<ul style="list-style-type: none"> ▪ Has a valid business license ▪ Not a direct selling business (except for those with business premise)
Cab Hire and Purchase Deposit Assistance		<ul style="list-style-type: none"> ▪ Has a valid driving and Public Service Vehicle licenses ▪ Acquired a permit by Commercial Vehicle Licensing Board (LPKP) or company. ▪ Cab's tender price ▪ A year experience as a cab driver.

Source: www.maiwp.gov.my

Appendix F (vi)

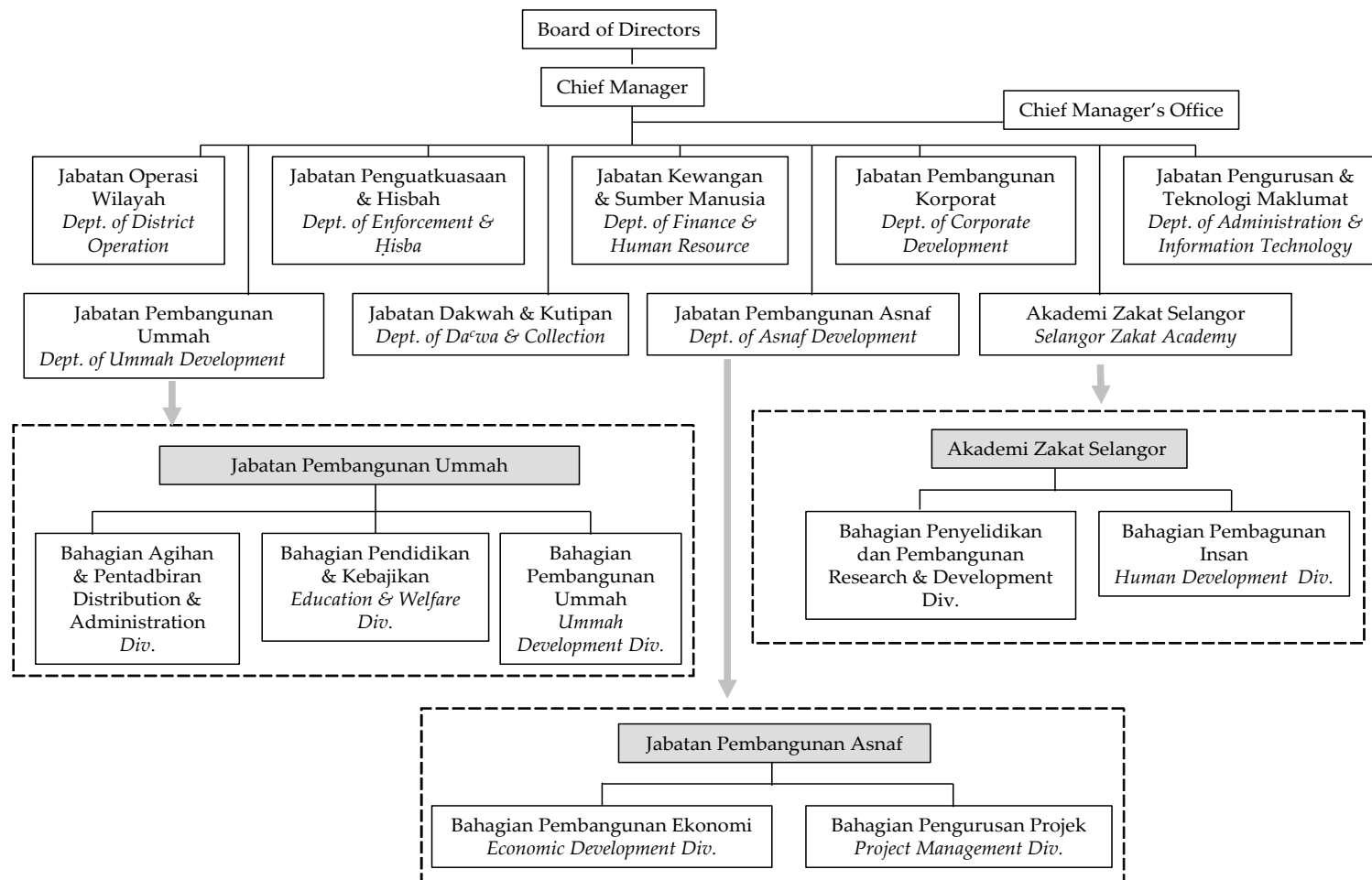
Majlis Agama Islam Wilayah Persekutuan: Investments in the Financial Markets and its Subsidiaries in 2008

Types of Investment		Companies / Products	Value of Investment (RM million)	Profits Generated in 2008
Islamic Deposits	Fixed	In 12 Financial Institutions	186	n.a.
Structured Investment Product		MAA Takaful Structured Links	40	New investment in 2008
		Bank Islam An Najah Islamic Negotiable Instrument of Deposit	20	
Unit Trusts		Hwang-DBS Dana Izdihar	2.35	0.21
		Amanah Saham Darul Iman	0.38	0.05
		Amanah Raya Berhad's Al-Wadiah Yad Dhamanah Trust Accounts Scheme	26.2	n.a.
Private Shares		Bank Islam Malaysia Berhad	1.3	0.02
		TH Plantation Berhad	2.3	0.23
Subsidiaries		Harta Suci Sendirian Berhad	1.0	n.a.
		Hospital Pusrawi Sendirian Berhad	3.38	n.a.
		Institut Profesional Baitulmal Sendirian Berhad	3.5	n.a.
		Anggun Mulia Sendirian Berhad	2.2	n.a.
		Baitulmal Wilayah Zenith Battery Sendirian Berhad	1.47	In liquidation process

Source: MAIWP, *Laporan Tahunan* 2008, 37-9.

Appendix G (i)

Lembaga Zakat Selangor: Organization Structure



Source: LZS, *Laporan Pengurusan Zakat Selangor 2007*, 6-7.

Notes: The shadowed boxes are the departments that are directly involved in the management of zakat investment.

Appendix G (ii)

Lembaga Zakat Selangor: Recipients and Types of Assistance

Distribution Purposes	Recipients	Types of Zakat Assistance
Consumption & Fulfillment of Basic Needs	All of the recipients ^a	Monthly Financial & Food Assistance Health Treatment Assistance Death Management Assistance Home Purchase/ Construction/Repair Schooling Assistance Home Rentals Assistance
Functional ^b	Riqāb ^a	Social Rehabilitation Assistance
	Ghārimūn ^a	Debt Settlement for individual or Islamic organizations
	Ibn al-Sabīl ^a	Fee for Local Transport or Abroad, Oversea Student Assistance
Investment	Faqīr and Miskīn	Capital Assistance (Business, Farming and Fishing) Scholarships Collective Trust Fund Assistance Collective Takaful Contributions Management of Support Facilities
	M'uallaf Qulūbuhum	Scholarships, Capital Assistance
	Fi Sabīl li Allāh	Scholarships, Allowances for Islamic Works (Education, Counselling, Administration) Contruction and Refurbishment of Schools and Worship Venues/Institution Other Islamic Organizations

Note: a. The recipients' income must be below the *hadd al-kifāya* to be eligible for the assistance.

b. The *ʿāmilūn* do not receive zakāt assistance but are given a portion of the distribution in form of salaries, fees and allowances.

Source: <http://www.e-zakat.com.my>

Appendix G (iii)

Lembaga Zakat Selangor: Recipients and Types of Allocation of Zakat in 2007 (in RM)

		Consumption							
Types of Allocation		<i>Fuqarā'</i>	<i>Masākīn</i>	<i>ʿĀmilūn</i>	<i>Mu'allafat Qulūbuhum</i>	<i>Ghārimūn</i>	<i>Ibn al-Sabīl</i>	<i>Riqāb</i>	<i>Fī Sabīl li Allā</i>
Monthly Financial Assistance		194,700	10,650,639		1,054,850				
Monthly Food Assistance		968,906	598,922						
Medical Assistance		10,234	218,360						
Rent Assistance		11,680	439,486		208,516				
Retail Emergency Assistance		8,122	718,355		164,105				
Home Repair			1,455,705		166,302				
Individual Home Construction		32,000	5,672,109		691,000				
Cluster Home Construction			428,511						
Education Supplies Assistance		147,810	2,228,571						2,104,840
General Education Assistance					171,186		42,795		5,194,745
School Fee Assistance			3,750,715						
Death Management			23,280		22,521	72,062			
Islamic Days Celebration			234,622		139,965				
Eid Gift		566,130	8,104,523		1,017,100				
Marriage Assistance					154,050				
Emergency Assistance									688,426

Total	1,939,582	34,523,798		3,789,595	72,062	42,795		7,988,011
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(cont.)

Functional								
Types of Allocation	<i>Fuqarāʾ</i>	<i>Masākīn</i>	<i>ʿĀmilūn</i>	<i>Muʿallafat Qulūbuhum</i>	<i>Ghārimūn</i>	<i>Ibn al-Sabīl</i>	<i>Riqāb</i>	<i>Fī Sabīl li Allā</i>
Special Allocation for Newly Converts Allowances to Attend Class, Circumcision, and Gift)				1,401,636				
For <i>Zakāt al-Fiṭr</i> Collection			1,444,272					
Zakat Institution Management			25,952,920					
Debt Payment					17,058,164			
Assistance to Non-Residents						385,773		
Faith & Ethical Rehabilitation							965,436	
Total			27,397,192	1,401,636	17,058,164	385,773	965,436	

(cont.)

Investment								
Types of Allocation	<i>Fuqarāʾ</i>	<i>Masākīn</i>	<i>ʿĀmilūn</i>	<i>Muʿallafat Qulūbuhum</i>	<i>Ghārimūn</i>	<i>Ibn al-Sabīl</i>	<i>Riqāb</i>	<i>Fī Sabīl li Allā</i>
Course/Training	87,620	8,251,440		1,109,093				166,0279
Scholarships		4,880,406		942,256				4,505,894
Sewing Workshop		1,736,319						
Capital Assistance		1,098,059		42,749				
Cluster Capital Assistance		1,966,540						
Community Centre		348,705						
Collective Takaful Contributions		259,766						
Publications				93,070				785,379
NGOs				14,173				1,984,648
Administration Expenses of Dept. of Human Development				496,664				
Assets of Recipients				187,307				
Allowances for Religious Teachers/ Officers				573,501				14,607,570
Emoluments (MAIS, Baitul Hasanah, Economic Development Projects)								6,630,917
Shelters Management	64,857	970,718		78,540				
Construction & Refurbishment of Schools								6218667

Construction & Refurbishment of Religious Institutions									3,035,224
Construction & Refurbishment of Religious Venues									6,784,952
Kolej Universiti Islam Antarabangsa Selangor									12,000,000
Total	152,477	19,511,953		3,537,353					58,213,530
Grand Total of Distribution	2,092,059	54,035,751	27,397,192	8,728,584	17,130,226	428,568	965,436		66,201,541

Source: LZS, *Asnaf*, various issues

Appendix G (iv)

Percentages of Allocations Made for Consumption, Functional and Investment Purposes at LZS in 2006 and 2007

		2006	2007
<i>Faqīr</i>	Consumption	92.9	92.7
	Functional		
	Investment	7.1	7.3
<i>Miskīn</i>	Consumption	71.6	63.9
	Functional		
	Investment	28.4	36.1
<i>‘Āmilūn</i>	Consumption		
	Functional	100.0	100.0
	Investment		
<i>Mu'allafat Qulūbuhum</i>	Consumption	38.5	43.4
	Functional	20.6	16.1
	Investment	40.9	40.5
<i>Ghārimūn</i>	Consumption	0.9	0.4
	Functional	99.1	99.6
	Investment		
<i>Ibn al-Sabīl</i>	Consumption	6.5	10.0
	Functional	93.5	90.0
	Investment		
<i>Riqāb</i>	Consumption		
	Functional	100.0	100.0
	Investment		
<i>Fī Sabīl li Allāh</i>	Consumption	7.6	12.1
	Functional		
	Investment	92.4	87.9

Source: LZS, *Laporan Pengurusan Zakat Selangor*, various issues.

Note: The above data is estimated by the researcher based on the data on the distribution of zakat according to types of allocations at LZS. A rough guideline for the components of each purpose is given in Appendix G (ii).

LIST OF ACTS AND ENACTMENTS

- Akta Pemegang Amanah 1949 [*Trustee Act 1949*]
- Akta Kesalahan Jenayah Syariah (Wilayah-Wilayah Pesekutuan) 1997 (Akta 559) [*Syariah Criminal Offences Act (Federal Territories) 1997 (Act 559)*]
- Akta Pentadbiran Undang-Undang Islam (Wilayah-wilayah Persekutuan) 1993 (Akta 505) [*Administration of Islamic Law Act (Federal Territories) 1993 (Act 505)*]
- Companies Act 1965
- Enakmen Jenayah Syariah (Negeri Selangor) 1995 [*Syariah Criminal Enactment (Selangor) 1995*]
- Enakmen Jenayah Syariah (Negeri Sembilan) 1992 [*Syariah Criminal Enactment (Negeri Sembilan) 1992*]
- Enakmen Kesalahan Syariah (Negeri Melaka) 1991 [*Syariah Offences Enactment (Malacca) 1991*]
- Enakmen Majlis Agama Islam Dan Adat Istiadat Melayu (Kelantan) 1994 [*Council of Religion and Malay Custom Enactment (Kelantan) 1994*]
- Enakmen Pentadbiran Agama Islam (Negeri Johor) 2003 [*Administration of Islamic Law Enactment (Johore) 2003*]
- Enakmen Pentadbiran Agama Islam (Negeri Melaka) 2002 [*Administration of Islamic Law Enactment (Malacca) 2002*]
- Enakmen Pentadbiran Agama Islam (Negeri Perak) 2004 [*Administration of Islamic Law Enactment (Perak) 2004*]
- Enakmen Pentadbiran Agama Islam (Negeri Pulau Pinang) 2004 [*Administration of Islamic Law Enactment (Penang) 2004*]
- Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [*Administration of Islamic Law Enactment (Selangor) 2003*]
- Enakmen Pentadbiran Agama Islam (Negeri Sembilan) 2003 [*Administration of Islamic Law Enactment (Negeri Sembilan) 2003*]
- Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 2001 [*Administration of Islamic Affairs Enactment (Terengganu) 2001*]
- Enakmen Pentadbiran Undang-Undang Islam (Pahang) 1991 [*Administration of Islamic Law Enactment (Pahang) 1991*]
- Enakmen Pentadbiran Undang-Undang Ugama Islam (Negeri Perlis) 1964 [*Administration of Muslim Law Enactment (Perlis) 1964*]
- Enakmen Pentadbiran Undang-Undang Ugama Islam (Negeri Sabah) 1992 [*Administration of Islamic Law (Sabah) 1992*].
- Enakmen Zakat & Fitrah (Sabah) 1993 [*Zakat and Fitrah Enactment (Sabah) 1993*]

Enakmen Zakat (Kedah) 1987 [*Zakat Enactment (Kedah) 1987*]
Kelantan Council of Religion and Malay Custom Enactment, 1966
Ordinan Majlis Islam Sarawak 2001 [*Sarawak Islamic Council Ordinance 2001*]
Trustees (Incorporation) Act 1952 (Act 258)
Qanūn al-Zakat li al-Sana 2001 (Sudan) [*Zakat Laws 2001 (Sudan)*]
Zakat and Ushr 1980 (Pakistan)

GLOSSARY

<i>ʿāmil</i>	(singular form of <i>ʿāmilūn</i>) A person who manage zakat. This may include the collector, distributor, keeper, accountant, etc. An owner of zakatable wealth who distributed his zakat personally is not considered as an <i>ʿāmil</i> .
<i>ʿayn</i>	Substance, material form.
<i>awwāq</i>	(plural form of <i>awqiyya</i>) A unit of mass used to measure silver which is equivalent to 200 <i>dirhams</i> at the time of the Prophet.
<i>bayʿ bi thaman ājil</i>	A sale contract where the price settlement is deferred.
<i>bayt al-māl</i>	State treasury. In the context of zakat, it is where the collected zakat is placed by the state's collector before being distributed to the recipients. Nowadays, it normally refers to a public institution responsible in managing Muslim's religious resources like zakat, endowment, donations, etc.
<i>Companion</i>	A person who saw the Prophet Muhammad p.b.u.h. while he was a believer and died as a Muslim.
<i>dhimma</i>	Liability or obligation.
<i>dīnār</i>	A golden coin used as a currency and equal to one <i>mithqāl</i> in weight. Mithqāl is a measure equivalent to 4.25 grams in weight.
<i>dirhām</i>	A silver coin used as a currency. Ten <i>dirhams</i> equals to one <i>dīnār</i> .
<i>faʿīd</i>	Excess of zakat collection after distribution.
<i>faqīr</i>	(singular form of <i>fuqarāʾ</i>) A person who is a destitute and in need.
<i>fatwa</i>	(singular form of <i>fatawā</i>) Formal legal opinion.
<i>fidya</i>	Expiation for violating the restrictions of certain religious obligatory acts.
<i>fiqh</i>	Islamic jurisprudence
<i>fī sabīlilla</i>	Literally means in the way to Allah. In the context of zakat, it refers

to a group of recipients. Some jurists refer them to those who are at war for religious purpose and those in pilgrimage. Some others include all types of acts that benefit the Muslim society.

<i>gharār</i>	Uncertainties or risk.
<i>ghārim</i>	(singular form of <i>ghārimūn</i>) One who is in debt where his debt may consume his assets and make them lower than his <i>kifāya</i> . This is also a group of zakat recipients.
<i>ḥadd kifāya</i>	Level of <i>kifāya</i> . (See <i>kifāya</i> below)
<i>ḥadīth</i>	Saying attributed to the Prophet pbuh. Categorically it includes his sayings, actions and approvals.
<i>ḥawl</i>	One whole Islamic lunar year. It is a time indicator for the obligation to pay zakat for certain types of wealth.
<i>ḥukm</i>	Rulings of Islamic law and its conjunctions.
<i>jizya</i>	Head tax on free non-Muslims under Muslim rule.
<i>ibn al-sabīl</i>	A group of zakat recipients. Refers to those who are traveling and not at their place of stay.
<i>ʿīd al-fiṭr</i>	A holiday for Muslims celebrated on the 1 st of Shawal which is the month after Ramadan.
<i>ijāra</i>	A contract of lease. Sometimes this contract is combined with the contract of sale and used in financing the purchase of fixed assets.
<i>ijtihād</i>	Exercition of effort in finding a ruling on something not mentioned clearly, according to certain methodology.
<i>istiḥsān</i>	A juristic preference which is associated with analogy or qiyas.
<i>istiṣlāḥ</i>	A concept that aims on the ground of public interest, to provide a different and more appropriate answer for cases which are based on any sources of Islamic law (revise)
<i>kerah</i>	A Malay term referred to works done as an obligation towards the rulers and without any compensation.

<i>kifāya</i>	Defined as the minimum basic need rate according to current costs of living which normally include costs for food, shelter, clothing, medical treatment, basic education and transport.
<i>luqaṭa</i>	Unclaimed wealth.
<i>māl mustafād</i>	Produce of wealth.
<i>maysīr</i>	Gambling.
<i>miskīn</i>	(singular form of <i>masākīn</i>) A person who is a destitute and in need.
<i>mu'alafatu qulūbuhum</i>	Those whose hearts are reconciled to Islam.
<i>niṣāb</i>	A minimum amount which determines the zakatability of wealth.
<i>riqāb</i>	(plural form of <i>raqaba</i>) Slaves or those under some types of bondage.
<i>tamlīk</i>	Transfer of ownership right.
<i>ribā</i>	Fixed amount of interest promised as a return for a loan extended.
<i>qarḍ ḥasan</i>	Interest free loan.
<i>qiyās</i>	Reasoning by analogy.
<i>ṣala</i>	Prayer.
<i>sanad</i>	Chain of transmission of a single or multiple hadiths.
<i>sūra</i>	A chapter of the Quran.
<i>surau</i>	A Malay term for a place of worship which is smaller than mosque.
<i>umma</i>	Society.
<i>ʿumra</i>	Pilgrimage to Mecca but with lesser ceremonies than <i>ḥajj</i> and need not be performed at a particular time of the year.
<i>waqf</i>	Endowment.

<i>zakāt al-fiṭr</i>	A small amount of payment whether in cash or kind obligated upon Muslims at the end of Ramadan.
<i>zakāt al-māl</i>	Zakat obliged on wealth.

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LIST OF INTERVIEWS

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| Interview 1 | <p>Name: <i>Ahmad Husni Abdul Rahman</i></p> <p>Position: <i>Zakat Executive Eksekutif Zakat, Pusat Pungutan Zakat MAIWP</i></p> <p>Venue: <i>University of Malaya</i></p> <p>Date: <i>17 June 2008</i></p> <p>Time: <i>4.00 p.m.</i></p> |
| Interview 2 | <p>Name: <i>Rafidah Ab Rahman</i></p> <p>Position: <i>Assistant Manager, Investment Unit, Development and Invetsment Division (Unit Pelaburan, Bahagian Pembangunan dan Pelaburan), MAIWP</i></p> <p>Venue: <i>Bangunan MAIWP, Jalan Ipoh, Kuala Lumpur</i></p> <p>Date: <i>19 June 2008</i></p> <p>Time: <i>2.00 p.m.</i></p> |
| Interview 3 | <p>Name: <i>Razali Md Jani</i></p> <p>Position: <i>Head, Corporate Communication Unit (Ketua, Unit Komunikasi Korporat), Pusat Pungutan Zakat MAIWP</i></p> <p>Venue: <i>Pusat Pungutan Zakat, Kuala Lumpur</i></p> <p>Date: <i>12 June 2008</i></p> <p>Time: <i>11.30 a.m.</i></p> |
| Interview 4 | <p>Name: <i>Dr Muhammad Yamin bin Ismail</i></p> <p>Position: <i>Manager, Baitulmal Division (Pengurus, Bahagian Baitulmal), MAIWP</i></p> <p>Venue: <i>Bangunan Dauzzakah, Kuala Lumpur.</i></p> <p>Date: <i>25 Sept. 2008</i></p> <p>Time: <i>2.00 p.m.</i></p> |
| Interview 5 | <p>Name: <i>M. Fauzi Masdan</i></p> <p>Position: <i>Head, Economic Development Division (Ketua, Bahagian Pembangunan Ekonomi), LZS</i></p> <p>Venue: <i>Bangunan MAIS, Shah Alam, Selangor</i></p> <p>Date: <i>18 Sept. 2008</i></p> <p>Time: <i>4.30 p.m.</i></p> |
| Interview 6 | <p>Name: <i>Assoc. Prof. Dr Patmawati Ibrahim</i></p> <p>Position: <i>Lecturer, University of Malaya</i></p> |

	Venue:	<i>University of Malaya, Kuala Lumpur</i>
	Date:	<i>16 Jan. 2009</i>
	Time	<i>3.00 p.m.</i>
Interview 7	Name:	<i>Abd Karim Mohamed</i>
	Position:	<i>Deputy Manager, Development and Investment Division, MAIWP (Timbalan Pengurus, Bahagian Pembangunan dan Pelaburan, MAIWP)</i>
	Venue:	<i>Pelaburan, MAIWP)</i>
	Date:	<i>Bangunan MAIWP, Jalan Ipoh, Kuala Lumpur</i>
	Time	<i>29 Jan. 2009</i> <i>2.30 p.m.</i>
Interview 8	Name:	<i>Haji Aidi Munawir Ahmed Shukri</i>
	Position:	<i>Acting Deputy Chief Manager (Management) and Head, Department of Finance and Human Resource (Pemangku Timbalan Pengurus Besar (Pengurusan) dan Ketua Jabatan Kewangan dan Sumber Manusia), LZS</i>
	Venue:	<i>Lembaga Zakat Selangor, Shah Alam, Selangor</i>
	Date:	<i>22 Jan. 2009</i>
	Time:	<i>4.00 p.m.</i>
Interview 9	Name:	<i>Dato' Prof. Dr Mahmood Zuhdi Abd Majid</i>
	Position:	<i>Lecturer, International Islamic University of Malaysia</i>
	Venue:	<i>Petaling Jaya, Selangor</i>
	Date:	<i>3 Feb. 2009</i>
	Time:	<i>6.00 p.m.</i>
Interview 10	Name:	<i>Dato' Prof. Madya Dr Haji Hailani Muji Tahir</i>
	Position:	<i>Lecturer, Jabatan Shariah, Faculty of Islamic Studies, National University of Malaysia & Member, Trustee Board, Lembaga Zakat Selangor.</i>
	Venue:	<i>National University of Malaysia, Bangi, Selangor</i>
	Date:	<i>6 Feb. 2009</i>
	Time:	<i>3.00 p.m.</i>
Interview 11	Name:	<i>Asmah Mat Salleh</i> <i>Assistant Officer of Resource Affairs, Majlis Agama Islam dan Adat Istiadat Melayu Kelantan</i>
	Venue:	<i>University of Malaya</i>
	Date:	<i>30 Feb. 2010</i>
	Time:	<i>10 a.m.</i>

